UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,) 2:13-cr-00232-BMS-1
vs.) Philadelphia, PA
) September 16, 2014
ANTHONY ROBINSON,)
Defendant.)

TRANSCRIPT OF CRIMINAL JURY TRIAL (DAY 2)
BEFORE THE HONORABLE BERLE M. SCHILLER
UNITED STATES DISTRICT JUDGE

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For the Government:				
Joyanah Headen	15	37	47,53	49
For the Defense:				
Tyrone Winckler	55	61	71	74

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P R O C E E D I N G S

THE COURT: All right. Let's start with page 1. Keep going. What's the first page that you have a --

MS. SCOTT: The first page that I actually have, Your Honor, that I think there may be an issue is 23. That's opinion evidence.

THE COURT: Page 23?

MS. LINEHAN: Your Honor, I actually started at 21. And I didn't know if you wanted to --

THE COURT: Okay. We'll go to 21 then.

MS. LINEHAN: But I don't know, Your Honor. It's just that you have in there "knowingly testified falsely". I don't know if that's your standard or if you do it when Your Honor has found that there's been evidence of a false statement.

THE COURT: I say that normally.

MS. LINEHAN: Okay. That's fine, sir.

THE COURT: All right. 23. What's on 23? We don't have any experts?

MS. SCOTT: No.

MS. LINEHAN: No, sir.

THE COURT: All right. Take out the expert stuff. All right, Helen? Okay. So that goes -- 23 and 24. 23 -- no. 23. Okay. Next?

MS. SCOTT: I anticipate we won't need number 25.

THE COURT: Okay.

MS. SCOTT: That's Defendant's testimony.

THE COURT: All right. He's not going to testify?

MS. SCOTT: I don't believe so.

THE COURT: Okay. Next?

MS. SCOTT: 26 for the same reason.

THE COURT: All right. 27?

MS. SCOTT: 27. We don't have any impeachment of which this testimony was prior to that act so that should be taken out as well.

THE COURT: Okay. You getting these, Helen?

THE CLERK: Yes, Judge.

MS. SCOTT: The next one I have is number 33.

THE COURT: Jump in any time there's something --

MS. LINEHAN: Your Honor, they're all the same that Ms. Scott is --

THE COURT: Okay. 33?

MS. LINEHAN: Yep. And my list is the

same so far.

THE COURT: Okay. All right. 33? Okay.

MS. SCOTT: I don't -- the portion that's in the brackets, I'm not sure where we're going to be with that, so I just kind of made a note for that. I don't know whether that's going to be necessary or not.

THE COURT: All right. Well, we'll see at the end of the testimony today whether we want to keep that in or out.

MS. SCOTT: I don't have any additional issues.

MS. LINEHAN: Your Honor, on page 50 --

THE COURT: 50?

MS. LINEHAN: -- Your Honor talks about interstate commerce. I don't know if Your Honor mentions that we have a stipulation to that.

THE COURT: Well, that's the thing. I prepare these ahead of time. So --

MS. LINEHAN: Understood. But we do have a stipulation to that. It's Government's Exhibit 30.

THE COURT: I'll see --

MS. SCOTT: I don't know that it's

necessary to take that out. I think Your Honor's instruction as it relates to stipulations and how that means that there's an agreement between parties sort of covers that issue.

THE COURT: I can just make a reference that the parties have stipulated that this did affect interstate commerce.

MS. SCOTT: That's fine.

THE COURT: Okay. Next?

MS. LINEHAN: That's all I have, Your Honor.

MS. SCOTT: That's all I have as well, Your Honor.

THE COURT: Okay. Let's -- now look at page 53 where I talk about "knowingly". And then in the brackets, I have "Government is not requesting". Is that in --

MS. SCOTT: That's fine.

THE COURT: -- or out?

MS. SCOTT: I don't have a problem with that?

THE COURT: Is it in?

MS. LINEHAN: Yes, Your Honor.

THE COURT: Okay. Now let's talk about the verdict sheet that I have in there. See what I have? On question 2, "knowingly using or carrying a firearm, guilty or not guilty". And then if not guilty then that's the end of that. But if the answer is guilty, they have to answer the interrogatory on "brandishing". Okay?

MS. SCOTT: That's fine.

THE COURT: And that's the same as to question 4. All right?

MS. SCOTT: That's fine.

THE COURT: All right. Well, we could have started later.

MS. SCOTT: We're easy.

THE COURT: That's good. Oh, good afternoon.

All right. Now let's talk about today we're having one witness?

MS. LINEHAN: Yes, Your Honor. Can I give you an update on that witness?

THE COURT: What do you mean an update?

MS. LINEHAN: Well, Your Honor, as you know, she did not appear yesterday.

THE COURT: I know that.

MS. LINEHAN: And we finally made contact with her. We were surprised that she didn't appear because, number one, she's under subpoena and, number two, she's very eager to testify as she was at the suppression hearing. So we made contact with her yesterday and --

THE COURT: Did she forget?

MS. LINEHAN: She did not as she said she was having some personal issues in the morning which prevented her.

THE COURT: Some what?

MS. LINEHAN: She was having some personal issues in the morning --

THE COURT: Yeah.

MS. LINEHAN: -- which prevented her from coming. But we're having the FBI agent go to her home this morning to make sure she understands that she needs to be here by 9. So if she needs transportation, Agent Carpenter will bring her here. That's where he is right now, Your Honor, en route to her home.

THE COURT: Okay. So she'll be here then.

MS. LINEHAN: Yes. That's my hope, Your Honor.

THE COURT: I'm not going to delay this case. If she doesn't show, that's it.

MS. LINEHAN: Well, Your Honor,

certainly I understand. And I'm hoping it doesn't come to that. But if I could address --

THE COURT: Well, I don't want it to come to that either but this trial was -- she knew about it. She's under subpoena. So we'll see what happens.

MS. LINEHAN: Understood.

THE COURT: Okay? And that's it? She's your last witness?

MS. LINEHAN: She is.

THE COURT: All right. Then you'll rest.

MS. MACEOIN: Yes. As -- Your Honor, about our witnesses?

THE COURT: Yes.

MS. MACEOIN: We have one officer who responded to the Subway. Just very briefly. And then one officer from the radio room to authenticate the CAD that was issued in each robbery, to be very brief. And that's that.

THE COURT: What is there to authenticate?

MS. MACEOIN: The CAD is a computer printout of the 911 description.

THE COURT: Right.

MS. MACEOIN: And I believe -- what I've done in the past is this person authenticates that that's an actual business record of the --

THE COURT: Is there a dispute?

MS. LINEHAN: Your Honor, I'll stipulate to the CAD.

MS. MACEOIN: Okay. That's fine. Then we can get by --

THE COURT: There you go.

MS. MACEOIN: -- without that.

THE COURT: All right.

MS. MACEOIN: And so, at this point, we think it's just the one officer who will be very brief.

THE COURT: Okay. Which one is it?

MS. MACEOIN: It's Officer Winckler who responded to the Subway.

THE COURT: Okay.

MS. LINEHAN: Now, Your Honor, there would be perhaps an option if the victim doesn't show that we have her declared unavailable and use her suppression testimony.

MS. MACEOIN: And we would object to that, Your Honor.

MS. LINEHAN: She was cross-examined in

front of Your Honor extensively regarding the incidents that occurred at the Subway. We're not there yet, Your Honor, so that --

THE COURT: You're right. We're not.

MS. LINEHAN: -- but I would just offer that to the Court as a possibility, 'cause the government could go through the steps we've taken in the last two days to make sure that she's here. And --

THE COURT: She's not unavailable. She's available. She's just choosing not to come. Now hopefully she'll be here. But it's not like she's in a hospital or --

MS. LINEHAN: Well, Your Honor, we don't, you know -- between the time when she testified before Your Honor at the suppression and now, I mean, Your Honor saw this witness. She was very willing to cooperate with the government. She was present on time. So something has occurred and we're investigating why between now and then she's reluctant to appear.

THE COURT: I don't know what the reason is. But, you know, she's not here, she's not here. Now your case can still go on without her. You've got video. It's not like nothing happened.

MS. LINEHAN: Understand, Your Honor.
THE COURT: Okay.
MS. LINEHAN: I'm just bringing Your Honor up to date on what happened.
THE COURT: Okay. And then we'll have closing arguments. How long do you think you need for that?
MS. LINEHAN: Ten minutes, Your Honor, with maybe five in rebuttal, five or ten in rebuttal.
THE COURT: So you need fifteen.
MS. LINEHAN: Yes, Your Honor.
THE COURT: Ten and five. You'll have fifteen.
MS. MACEOIN: Your Honor, I think 20 is a long shot. So 20 minutes would be the longest I would be --
THE COURT: Fifteen. Ten and five for you and you got 15.
MS. MACEOIN: Okay.
THE COURT: All right. All right.
(Recess from 8:39 a.m. until 9:35 a.m.)
THE REPORTER: All rise.
THE COURT: All right. Good morning. Everybody's here.
(Pause)

THE COURT: Ms. Scott, is your witness here?

MS. SCOTT: Officer Winckler, Your Honor? I just looked out there. He wasn't there at the time I looked out there. So hopefully he'll come during the time that Ms. Headen is on the stand. And I'll continue to go check.

(Pause)

(Jury in)

THE COURT: Well, good morning, everybody. Hope you had a good evening. There's only certain things that judges can control. They can't control traffic. So sorry about that. Anyhow, who's your first witness?

MS. LINEHAN: Good morning, Your Honor. The government calls Joyanah Headen.

THE COURT: Come on up. Good morning.

THE WITNESS: Good morning.

THE CLERK: Please raise your right hand.

THE WITNESS: Hello.

GOVERNMENT'S WITNESS, JOYANAH HEADEN, SWORN

THE CLERK: Please state your name for the record and spell your last name.

THE WITNESS: Joyanah Headen,

H-E-A-D-E-N.

DIRECT EXAMINATION

BY MS. LINEHAN:

Q. Good morning, Ms. Headen.
A. Good morning.
Q. Where were you working on December 1st, 2012?
A. At the Subway.
Q. And where was the Subway located?
A. Broad and Spring Garden.
Q. How long had you worked at Subway on December 12th (sic), 2012?
A. Probably about seven months.
THE COURT: December 12th?
MS. LINEHAN: December 1st. Sorry. December 1st, 2012. I apologize, Your Honor.
THE WITNESS: For about seven months.

BY MS. LINEHAN:

Q. What did you do for them?
A. Cashier.
Q. And did you like working at Subway?
A. Uh-huh.
Q. How much money did you make?
A. Not a lot but it was reasonable.
Q. And what shifts would you work?

A. All types. It was variable.
Q. Were there times that you worked at the Subway store when you were alone?
A. All the time.
Q. Did you make sandwiches?
A. Yes.
Q. Where is the Subway -- you said it was on 545 North Broad.
A. Uh-huh.
Q. What section of the city is that in?
A. North city, I think. I think that's North Philadelphia.
Q. And at the time, what section of the city, not your address, but what section of the city were you living in?
A. Cheltenham.
Q. So how far was it from Cheltenham to your work?
A. It's pretty far, like a hour.
Q. And how did you get there?
A. Bus.
Q. And did you have to do that to get to work and to get home?
A. Yes.
Q. So is it approximately a two-hour commute to

get to Subway when you're working --

A. Every day, yes.

Q. I'd like to bring you back to December 1st, 2012, if I could.

A. Uh-huh.

Q. Was your store robbed on December -- I keep saying -- December --

A. December 1st.

Q. -- 1st, 2012.

A. Yes.

Q. Was your store robbed?

A. Yes.

Q. Who was working there when it was robbed?

A. Just me.

Q. And can you explain to the ladies and gentlemen of the jury exactly what happened?

A. Well, a young man came in. It was about 5:45, I think it was. He ordered a sandwich a foot long, paid for it, gave him his change, turned around and asked me to do him another favor. I said yes. He pulled his gun out and told me to give him all the money in the drawers. I gave him the money. He asked me did I know the safe code. I told him I didn't know. I swear I didn't know. He told me I better not be lying or he'll kill me -- or he'll hurt me -- I'm sorry -- he'll hurt me. I told him I didn't know. He left that alone. He got to the door. He said now you can call the cops and he walked out.

Q. Okay. Let's first start when the man entered the Subway. Well, first, the person that you've described --

A. Yes.

Q. -- as coming in to the Subway ordering his sandwich and then robbing you --

A. Yes.

Q. -- is there any person present in the courtroom that you recognize from that evening when you were robbed?

A. The gentleman sitting there.

Q. And can you describe what he's wearing for the purposes of the identification?

A. I guess that's a brown shirt and black pants.

MS. LINEHAN: Your Honor, let the record reflect the in-court identification of the defendant by Ms. Headen.

THE COURT: Okay.

BY MS. LINEHAN:

Q. When he came -- when the defendant came into your store, were there any other customers present?

A. No.
Q. Were there any other Subway employees there?
A. No.
Q. And were you distracted by anything? Were you making any other food?
A. No.
Q. So when he ordered his sandwich, was there anything unusual about the way he ordered his sandwich?
A. No. He ordered like a regular customer.
Q. How far was he from you when he ordered his sandwich?
A. This is the counter. This is me. And this is him.
Q. Did he have anything covering his face when he ordered the sandwich?
A. No.
Q. Where did you look when he ordered his sandwich?
A. At his face.
Q. And were you afraid of him?
A. When he ordered the sandwich?
Q. Yes.
A. No. He was a customer.
Q. What happened during the time that you were

making the sandwich for him? Did he engage you in small talk?
A. He asked me was I alone. That's pretty much it.
Q. How did you feel when the man that had just ordered a sandwich asked you if you were alone at that point?
A. I felt okay because all customers they come and they ask if I'm by myself, am I here by myself. So it was like a regular question to me.
Q. And did you respond to him?
A. Uh-huh.
Q. And did you continue to make his sandwich?
A. Yes.
Q. And were you afraid at that point when you were --
A. No.
Q. -- making a sandwich? Did he pay for it?
A. Yes.
Q. And where did he pay for it?
A. At the cash register.
Q. And did you work the cash register?
A. Uh-huh.
Q. How far were you from him when he paid for the sandwich?

A. Just like this.

Q. And were you looking at him when he paid for it?

A. Directly.

Q. And were you looking at his face?

A. Directly.

Q. Was there anything between you and him to prevent him from seeing his face?

A. No.

Q. Did he cover his face when he paid for the sandwich?

A. No.

Q. Now let's talk about the robbery.

A. Uh-huh.

Q. You said that he demanded money from you, is that right?

A. Correct.

Q. You also said that he used a gun to do that.

A. Correct.

Q. Describe for the ladies and gentlemen of the jury what the gun looked like.

A. It was black. I don't know if it was an automatic or what but it was black. It looked like a .45 or something. My brother has a gun so that's how I know what it looks like.

Q. And where did he pull it from?
A. His waist.
Q. And how close was the gun to you when he demanded the money from the drawer?
A. It was pointing directly at me. Like he's standing here and the gun is like this.
Q. And did you look at the gun?
A. Of course.
Q. And how did you feel when you saw him pull a gun from his waistband?
A. I mean, I was nervous and shocked. But I wanted to see him, you know -- I didn't want to get shot. I wanted to comply. And then let him be about his business.
Q. Did you give him the money from the drawer?
A. Yes.
Q. Do you know how much money you gave him?
A. A hundred dollars.
Q. And when he asked you for the combination to the safe, how did you feel?
A. Uncomfortable, of course. But I didn't know it so there was really nothing I could do.
Q. And what did he say when you said you didn't know it.
A. I better not be lying or he'll hurt me.

Q. And how did you feel when he said that?
A. Yet again, nervous but I was in a awkward position. There was nothing I could really do.
Q. And were you able to call for help at this point?
A. No.
Q. And when he was -- when you were getting the money out of the drawer and he was asking you for the combination of the safe, where was the gun?
A. In his hand.
Q. And were you afraid?
A. I was nervous.
Q. Were you in shock? You said you were in shock.
A. Yeah.
Q. Why?
A. I mean, 'cause I didn't want to get shot. He was pointing the gun directly at me.
Q. After you gave him what he asked for, you said that, in leaving, he said you can call the police now.
A. Yeah. He said now you can call the cops.
Q. Did you?
A. Yes.
Q. And did you also push a panic button in the

store?

A. (No audible response).

Q. Now, Ms. Headen --

THE COURT: You have to answer.

THE WITNESS: Yes.

BY MS. LINEHAN:

Q. Was the Subway that you worked in, was it equipped with surveillance --

A. Cameras?

Q. -- cameras?

A. Yes.

Q. And have you viewed any of the surveillance footage in this case?

A. No.

Q. Did the police respond to your call for help?

A. Yes.

Q. And did you tell the police what had happened?

A. Yes.

Q. And did you give a description?

A. Yes.

Q. And did the detective respond to take a statement from you?

A. Yes.

Q. Did you give the detective a description?
A. Yes.
Q. And was the detective a detective named Detective Andracchio?
A. Yes.
Q. What happened after you left and you went home? How did you react to this robbery?
A. Well, I mean, that's when everything really hit me. I was kind of scared. I told my wife and for a while, like maybe a week or two, I didn't go back to work. And when I finally went back to work, I was still kind of skeptical about being there. I was kind of watching everybody that come in till I finally just said, I don't -- I left. I just quit.
Q. And is that a direct result of the robbery?
A. Of course.
Q. And how have you felt since the robbery about what happened to you that night?
A. I mean, I watch my back a lot. I got to watch my back. You never know.
Q. I'd like to show you what's been marked as Government's Exhibit 1C. It'll appear on your screen. Now I asked you if the Subway store was equipped with surveillance cameras --
A. Right.

Q. -- and you said it was. You also indicated that you haven't seen any videos prior to today's date, is that right?
A. Correct.
Q. So I'm going to play this for you and we're going to pause it. But I'd ask, if you could, while the jurors are watching it, you sort of can use it to explain what's happening in the video.
A. Okay.
(Videotape of surveillance camera played)
THE WITNESS: That's him walking around just looking around like any old customer. I'm ringing up his order. He's paying for his order. I'm getting ready to give him the change. Giving him the sandwich.
BY MS. LINEHAN:
Q. What's happening now?
A. I'm not sure. He's just walking around. He's looking outside. 'Cause I remember him walking back and forth looking outside, looking on his side, but all my customers coming in do that when they're waiting.
Q. Okay. Now you can see that the video is paused.
A. Uh-huh. That's me giving him his sandwich.

That's when he was --

MS. LINEHAN: Stop it right there.

(Videotape paused)

THE WITNESS: That's when he pulled the gun.

BY MS. LINEHAN:

Q. Did you believe --

A. See my hands? See me shocked standing there and looking?

Q. Did you believe it was a real gun?

A. Of course.

Q. Why?

A. Because, like I say, my brother is legally able to carry a gun. I know what it looks like.

Q. And was there any -- that evening when you were looking at the gun, did you believe it was a water pistol?

A. No.

Q. Did you think it was a toy gun?

A. No.

Q. Would you have given him the money in your drawers --

A. Not at all.

Q. -- if it was a water pistol?

A. Not at all.

MS. LINEHAN: Okay. Go on.

(Resume playing of videotape)

THE WITNESS: I'm trying to get the drawer open to give him the money. He's asking me about the safe.

MS. LINEHAN: Stop it there.

(Videotape paused)

THE WITNESS: That's when he's still asking me about the safe. When he leans over, that's when he was making sure I was getting the money and asking me about the safe.

BY MS. LINEHAN:

Q. And how did you feel during this part?

A. I was nervous but I just wanted to hurry up and give him the money.

(Resume playing of videotape)

MS. LINEHAN: Stop it there.

BY MS. LINEHAN:

Q. He just asked you a question.

A. To lift the drawer up to make sure there wasn't money under there.

Q. Okay. And what did you say? What did you do?

A. I lift it up. There wasn't nothing in there.

Q. And what's he doing with the gun when he's telling you to lift the drawer up.
A. It's right there on the counter pointed directly at me.
(Resume playing of videotape)
MS. LINEHAN: Stop it there.
BY MS. LINEHAN:
Q. What does he do with the gun at this point?
A. Putting the gun back in his waist.
Q. What does he do with the money?
A. Put it in his pocket.
Q. And is he saying anything to you if you can remember?
A. That's when he said now you can call the cops.
(Resume playing of videotape)
THE WITNESS: And he left.
BY MS. LINEHAN:
Q. At what point did you push the panic button?
A. Right after he left.
Q. Where was the panic button located?
A. Right on the side of the register. It's a little white button.
Q. Now when you gave the description to Detective Andracchio, how did you describe the

defendant who robbed you?
A. I told him he was a middle-aged guy, maybe in his late 30s, early 40s. He had on gray jeans, black and white New Balances, a sweatshirt -- I think it was black and white with some writing on it -- and a soda cap. And he had salt and pepper beard.
Q. I want to show you what's been moved into evidence as Government's Exhibit 2. First of all, have you ever seen this before what I'm about to show you?
A. No.
Q. Do you recognize it?
A. Yes. It's the hoodie he was wearing.
Q. Okay. Now you say it's the hoodie he was wearing. At what point?
A. When he came in.
Q. Okay.
A. And when he robbed me.
Q. Did you see that hoodie again?
A. The next day.
Q. All right. I'd like to show you what's marked as Government's Exhibit 3. Do you recognize these?
A. The sneakers he was wearing.
Q. Okay. And did you see those after the

robbery?

A. Yes.

Q. When?

A. The next day.

Q. Now in addition to Detective Andracchio, you had given a description to the police that responded, correct?

A. Uh-huh.

Q. And did you try to be as accurate as possible?

A. Yes.

Q. How did you feel when you were giving the description to the responding police?

A. Well, I was nervous, shocked, a little confused. I was a little bit of everything. But I was sure of this man.

Q. Tell the jurors what happened the next day on December 2nd, 2012 when you were traveling in a car with your companion?

A. I was on my way to my mom's and she was on her way to work. And we was going down 10th Street. I think it was, like, off of Wagner. And I just so happened to look out the window and he was walking up the street. And I looked at her and said, "Babe, that's the guy who robbed me." And she said, "Are you sure?" I'm like, "Yes. I'm looking right at him. And he has the same thing he had on when he robbed me."

Q. Let me stop you there, Ms. Headen. What section of the city were you in when you were traveling with your wife?

A. I think 10th and Wagner is in Logan. I think that's the Logan section of the city.

Q. Were you driving?

A. No. I was a passenger.

Q. Was your wife driving?

A. No. She was a passenger.

Q. Okay. So you said you looked out the window and you said, "Babe, that's the guy that robbed me."

A. Uh-huh.

Q. What about him made you notice --

A. His face. I seen him in his face. And then I just looked at him and looked at him up and down. I said -- and he has the same exact thing on. Like, who does that?

Q. And did you call the police?

A. Yes. I called the detective. My wife called the cops.

Q. And which detective did you call?

A. Andracchio. That's how you say his name, right? Yeah.

Q. And had he given you his contact information the night before?

A. Yes.

Q. What did you say to Detective Andracchio?

A. I told him I see the guy that robbed me.

Q. And what did he do?

A. He asked me was I sure and I told him yes. And I'm describing to him how he's walking. I started following him so I can make sure that he wouldn't get away by the time the cops came.

Q. And when you say you were following him, you said you first noticed him, he was walking on the street.

A. He was walking down the street. Uh-huh.

Q. What else did you see him do?

A. Well, I -- when I said this to her, my window was kind of open, so I figured he kind of heard me but I wasn't sure because he walked in the store. He walked in a corner store. So I waited in the car until he came out. And when he came out, he looked around and then he walked directly to -- down the street to a car, a black jeep or a van, a black jeep, and got in with a female. And then I started to follow the jeep.

Q. Did you give Detective Andracchio a description of the truck?

A. Yes.

Q. And did you give Detective Andracchio the plate number?

A. Yes.

Q. How far would you say you followed him before the police pulled that black truck over?

A. How far? You mean in blocks?

Q. Yeah, approximately.

A. Maybe four.

Q. And did you ever lose sight of him?

A. No.

Q. And why was it important to you that you follow him and communicate to the detective his location?

A. Because I wanted him caught.

Q. And did the police stop the truck that he was traveling in?

A. Yes.

Q. Well, I was, like, a block behind and they got him out the car. They put the cuffs on him, sat him in the car. They came to me and asked me to come verify his description. And I did. And then that was it.

Q. Ms. Headen, did the police suggest to you when they had the defendant at their car and you were in your car that this was the man that robbed you? Did they ever tell you that?

A. No.

Q. Did they do anything to make you say that this is man that robbed me?

A. No. I already knew.

Q. Well, let me ask you this question then. At the point when you were in your car, and you saw him and you called Detective Andracchio, did you need a second look at this defendant to know that that was the man that robbed you?

A. No.

Q. I'd like to go back for a minute to the tape. Now that you've watched the tape, which is Government's Exhibit 1C, can you tell the ladies and gentlemen of the jury, now that you've seen it and you were one of the persons in it, was that tape altered in any way?

A. No, not at all.

Q. Okay. Was there anything different about what occurred that --

A. Nothing.

Q. -- did not appear in that tape?

A. No.
Q. When you saw the defendant the next day wearing the same clothes walking down the street and you identified him as the man that robbed you the night before, had you seen this tape?
A. No.
Q. Had you seen any photos made from this tape?
A. No.
Q. Is this the first time that you're seeing it?
A. Yes.
Q. Before you came in to testify today, was it the first time that you saw the photos --
A. Yes.
Q. -- that were made from the tape?
A. Uh-huh.
Q. Is there any doubt in your mind, Ms. Headen, that this defendant is the man that robbed you on 12 --
A. Not at all.
Q. -- on December 1st, 2012?
A. Not at all.
Q. Was there any doubt in your mind the next day when you saw him walking down the street?
A. No.

MS. LINEHAN: Nothing further, Your Honor.

THE COURT: Cross-examine?

CROSS-EXAMINATION

BY MS. MACEOIN:

Q. Good morning, Ms. Headen.

A. Good morning.

Q. Just have a few questions for you. So let's take you back to December 1st, 2012.

A. Okay.

Q. When this person walked into the Subway, was it the beginning or the end of your shift?

A. It was the beginning.

Q. So how long had you been at work that day, if you can remember?

A. I started at 5. He came in about 5:45.

Q. Okay. And aside from -- first of all, when he walked in, there was nothing unusual about him to you.

A. No.

Q. You said that he made small talk like most customers do.

A. Uh-huh.

Q. He ordered a sandwich that wasn't unusual or anything. Nothing about his appearance, he wasn't

extremely tall or extremely --
A. No.
Q. -- large or anything. Okay. So up until the point where you saw what you thought was a gun, it was a normal customer interaction, correct?
A. Uh-huh.
Q. You have to answer yes or no.
A. Yes, ma'am.
Q. Okay. So as the robber is standing there and he pays for his sandwich --
A. Uh-huh, yes.
Q. -- you give him change.
A. Yes.
Q. And then he says to you "Can you do me a favor?" And he pulls out what you think is a gun and puts in on the counter, correct?
A. He don't put it on the counter. He puts it at his waist and points it at me.
Q. Okay. So at that moment, the gun is pointing at you.
A. Correct.
Q. And it looked like on the video, you go to try to open the register, correct?
A. Correct.
Q. And it's like a touch screen computer?

A. Yes.
Q. And it looked to me, and correct me if I'm wrong, that it took you a few minutes to do that -- a few seconds.
A. 'Cause I was kind of nervous.
Q. Right.
A. Right.
Q. So you had to push the right buttons to get the register open?
A. Right. Right.
Q. Okay. And then when you opened the register, it was a matter -- you were concentrating on just getting the money out, right --
A. Correct.
Q. -- and again, turning it over to him.
A. Correct.
Q. So like you said, when you got home that night, it was -- it kind of hit you.
A. Right.
Q. So when -- after you called 911, a couple of officers responded before Detective Andracchio, is that correct?
A. Yes.
Q. Do you remember if there was an Officer Winckler?

A. I didn't get the officer's name.
Q. Okay. Was he in uniform?
A. Yes.
Q. Okay. And did he write down something as you were talking to him?
A. Yes.
Q. Was he an African-American gentleman? Do you remember?
A. I'm not sure.
Q. Okay. So he's writing down as you're telling him?
A. Correct.
Q. And it's kind of a summary of what just happened.
A. Yes.
Q. Okay. So in that moment, you're trying to get him the details he needs --
A. Right. Right.
Q. -- in order to put out a radio call, correct?
A. Right.
Q. All right. So when you called 911, same thing. You're trying to get them the details that they need to put out a call, correct?
A. When I called 911 the first -- the robbery?

Q. I'm sorry. On the day of the first -- on the day of the robbery.
A. Yes.
Q. Okay. So you're concentrating on giving a description --
A. Yes.
Q. -- to stop this person.
A. Yes.
Q. Now when he left the store, you didn't see which way he went?
A. No.
Q. Okay. So you don't know if it was to the left, which would be north --
A. To the right, nope.
Q. -- or to the right. Okay. And when you talked to Detective Andracchio, you told him I didn't see which way he went.
A. Correct.
Q. Okay. So just the sequence of things so I understand it, you called 911.
A. Yes.
Q. A uniformed officer arrived.
A. Yes.
Q. You talked to him.
A. Yes.

Q. And then Detective Andracchio arrived --
A. Yes.
Q. -- and you spoke to him.
A. Yes.
Q. Okay. If you can -- there's a book up there, I believe. Is there a binder up there?
A. No.
Q. There's one here.
MS. MACEOIN: If I may approach, Your Honor?
BY MS. MACEOIN:
Q. If you can look at tab B?
A. Tab B, meaning inside here?
Q. Yes. Do you recognize that document? Oh, I'm sorry. Tab B, the next one. That one, correct.
A. Okay. Yes.
Q. Is this the statement that you gave to Detective Andracchio?
A. Yes.
Q. Okay. So it's a handwritten statement and if you look at the bottom, your signature is on the bottom?
A. Yes, ma'am.
Q. And then on the next page, your signature is on the -- midway to the page as well.

A. Yes.
Q. So as he wrote things out afterwards, you read them --
A. Yes.
Q. -- and you said this is exactly what I said to you.
A. Yes.
Q. Okay. So in that, you described about halfway down the first page: Question: "Did the person have a gun?" You said "Yes, a black semi auto." Is that right?
A. Yes, ma'am.
Q. Okay. And you're basing that description of a semi automatic on kind of what you know about guns from your brother having one?
A. Yes, ma'am.
Q. Okay. How many times have you looked at your brother's gun?
A. Well, he was living with me at the time, so every day.
Q. Okay. And in your experience, that gun was a semi automatic?
A. Yes.
Q. Okay. So you knew -- you were looking at that saying it looks like my brother's gun.

A. Correct.
Q. Okay. Now aside from your brother's gun, do you have any experience handling --
A. No.
Q. -- or dealing with firearms?
A. Huh-uh, not at all.
Q. So the next day when you see -- as you described, you saw Mr. Robinson on the street.
A. Yes.
Q. And you, at that time, believed he was the person that robbed you --
A. Yes.
Q. -- and you made the appropriate police reports, correct?
A. Yes.
Q. Okay. I'm going to play for you the end of the video that you just saw.
A. Okay.
Q. It's not that segment. It's a little later when you call 911.
A. Okay.
Q. So again, it starts at minute 355. And I want you to pay attention to the audio.
THE REPORTER: This is one exhibit?
MS. MACEOIN: Exhibit 1B.

THE REPORTER: 1B, right.

MS. MACEOIN: At minute -- starting at minute 03:55.

(Resume playing of videotape)

BY MS. MACEOIN:

Q. So again, just to authenticate, that's the same scene that we just saw, correct?

A. Uh-huh.

Q. Okay.

MS. MACEOIN: If you can turn the volume as high as it goes, that would be helpful.

THE COURT: 03:55?

MS. MACEOIN: Yes, 03:55.

THE COURT: Move it to 03:55.

MS. MACEOIN: Right there, yeah.

THE REPORTER: Placing it there?

MS. MACEOIN: Yes.

THE REPORTER: It's not showing up as I pooled through --

MS. MACEOIN: That's good. From there.

THE REPORTER: You sure?

MS. MACEOIN: Yes.

(Audio from videotape played but indiscernible)

BY MS. MACEOIN:

Q. Is that your voice?

A. Uh-huh. Yes.
(Audio from videotape played but indiscernible)
MS. MACEOIN: Okay. You can stop it there.
BY MS. MACEOIN:
Q. Okay. So that was your -- as you recall, was that you giving a description to the 911 dispatcher?
A. No. I was talking to my wife at that time.
Q. Okay. So you --
A. I had already called the cops.
Q. Okay. So you're giving your wife a description --
A. Correct.
Q. -- and that's the way you described it --
A. Yes.
Q. -- what you just heard there.
A. Yes.
Q. Okay. And then shortly, right at the end of that clip, you heard some more talking. Was that when the police arrived?
A. Yes.
Q. Okay.
MS. MACEOIN: At this time, I don't have any other questions for this witness.

THE COURT: Okay.

MS. LINEHAN: Just brief redirect, Your Honor.

REDIRECT EXAMINATION

BY MS. LINEHAN:

Q. Ms. Headen, the defendant's attorney talked to you about a statement that you gave to Detective Andracchio. And this is approximately an hour after you were robbed.

A. Okay.

Q. Can you read for the ladies and gentlemen how you described in your statement the person that robbed you?

A. "He was a black male, about 5'8", thin built, salt and pepper hair and beard. He was wearing gray jeans, black and gray jacket with lettering on the front and wearing a sculley. He had black and white New Balance sneakers on. He was about 35 to 40 years old."

Q. Thank you.

A. Uh-huh.

MS. LINEHAN: Nothing further, Your Honor.

THE COURT: Anything else?

MS. MACEOIN: Your Honor, we just move

in the document I showed to the witness. I marked as Defendant's Exhibit 3 and I just ask that we move into evidence.

THE COURT: Which document was that?

MS. MACEOIN: That was the 75483, tab B, that was -- that she identified as the statement she made to Detective Andracchio.

THE COURT: That's what she just read?

MS. MACEOIN: Yes.

THE COURT: Okay.

MS. LINEHAN: That's fine, Your Honor.

THE COURT: All right.

MS. LINEHAN: Your I, I would ask that Ms. Headen be permitted to be excused.

THE COURT: Oh, are you done?

MS. LINEHAN: Yes.

THE COURT: And you're done?

MS. MACEOIN: Court's indulgence, Your I. Just one moment. Your I, if I can just ask the witness one more question and show --

THE COURT: Go ahead.

MS. MACEOIN: -- a portion of that video.

THE COURT: Go ahead.

MS. MACEOIN: And we can pick up the

video wherever you left off.

RECROSS-EXAMINATION

BY MS. MACEOIN:

Q. So you just described that first thing that we heard was the call to your wife.

A. Uh-huh.

Q. Okay.

THE REPORTER: This isn't going to be where we left off.

MS. MACEOIN: That's correct.

THE REPORTER: No, it's not going to --

MS. MACEOIN: It's not.

THE REPORTER: We'll have to spot check it.

MS. MACEOIN: Okay.

THE REPORTER: The time doesn't show up so I've just got to spot check it where you want it.

(Audio from videotape played but indiscernible)

MS. MACEOIN: Can you just pause that for a moment?

(Videotape paused)

BY MS. MACEOIN:

Q. So you gave two descriptions there. All right.

A. I didn't give two descriptions. I was unsure of his leather jacket. His jacket was black or brown.

Q. Okay.

A. I know it was a dark-colored jacket with writing on the front.

Q. But you -- both of those calls were to the same person. That was your wife? Both those descriptions?

A. That was the same -- that wasn't two calls. That was one call --

Q. One call. Okay.

A. -- with me repeating what I said.

Q. To your wife.

A. Correct.

Q. Okay.

MS. MACEOIN: If you can continue playing.

(Audio from videotape played but indiscernible)

THE WITNESS: That's me talking to the officer.

MS. MACEOIN: Okay. Can you pause there? Thank you.

(Videotape paused)

BY MS. MACEOIN:

Q. So that's your description you're giving to

Officer Winckler?

A. When he came in.

Q. Okay.

MS. MACEOIN: If we can back up to about minute 03:00 which would be about two-thirds of the way through.

(Audio from videotape played but indiscernible)

BY MS. MACEOIN:

Q. Is that you telling a customer?

A. They was at the window.

Q. Okay. So you had already called the cops at that point.

A. That's not right.

MS. MACEOIN: If we can back it up a little bit, please. About --

BY MS. MACEOIN:

Q. Is that you calling the police right there? Is that a yes?

A. To them or my wife. I don't know how far back you went.

Q. But you used your cell phone, not the store phone.

A. Correct.

(Audio from videotape played but indiscernible)

BY MS. MACEOIN:

Q. Is that you talking to your wife?
A. That's my wife.
MS. MACEOIN: Okay. If you can back it up another inch. Thank you.
(Audio from videotape played but indiscernible)
BY MS. MACEOIN:
Q. Are you talking to the police at that point?
A. No. I probably was speaking just out loud in general.
Q. Okay. And that's the point where you're calling what you've identified as being your wife, correct?
A. Uh-huh.
MS. MACEOIN: I apologize. If you can just back it up to about a third of the way from the beginning. Thank you. I apologize, Your Honor.
(Audio from videotape played but indiscernible)
BY MS. MACEOIN:
Q. Do you recall who you're talking to at that moment?
A. Huh-uh.
Q. You have to answer yes or no.
A. No, ma'am.
Q. Okay.
(Audio from videotape played but indiscernible)

MS. MACEOIN: If you can pause that, please. Thank you.
BY MS. MACEOIN:
Q. So that, again, is the conversation with your --
A. That's the same conversation --
Q. -- with your wife. Okay. But previous to that, you had called 911.
A. Yes, ma'am.
Q. Okay.
MS. MACEOIN: I don't have any further questions.

FURTHER REDIRECT EXAMINATION

BY MS. LINEHAN:
Q. Ms. Headen --
A. Yes.
Q. -- the shirt that I showed you, Government's Exhibit 2, is that the shirt that the defendant was wearing --
A. Yes.
Q. -- when he robbed you?
A. Yes.
Q. Is that the shirt that the defendant was wearing the next day --
A. The next day.

Q. -- when the cops arrested him?
A. Yes.
MS. LINEHAN: Nothing further.
MS. MACEOIN: I don't have any further questions. Thank you.
THE COURT: All right. Thank you.
THE WITNESS: You're welcome.
THE COURT: You're excused.
MS. LINEHAN: Your Honor, the government doesn't have any other witnesses. And the government would rest at this point with the admission of all the exhibits that we moved in during our case-in-chief.
THE COURT: All right. Admitted.
MS. MACEOIN: Yeah. Your Honor, we have no objection to the exhibits. If we can see you for a moment, Your Honor?
THE COURT: Come on.
(Begin sidebar conference)
MS. MACEOIN: Your Honor, at this time, the defense moves (indiscernible) Rule 29 for his motion for judgment of acquittal for the charges II and IV of the gun charges in this case.
THE COURT: Denied.
MS. MACEOIN: Thank you.

(End sidebar conference)

THE COURT: All right. The government has rested.

MS. MACEOIN: Thank you, Your Honor.

THE COURT: Who is your first witness?

MS. MACEOIN: The defense calls Officer Winckler, Tyrone Winckler.

THE COURT: Officer?

THE REPORTER: Please raise your right hand?

DEFENSE WITNESS, TYRONE WINCKLER, SWORN

THE CLERK: Please state your name for the record and spell your last name?

THE WITNESS: Officer Tyrone Winckler. Badge number 6880, assigned to the Sixth District.

DIRECT EXAMINATION

BY MS. MACEOIN:

Q. Good morning, Officer.

A. Good morning.

Q. The sixth district, does that cover the area around 545 North Broad Street?

A. Yes, it does.

Q. And, first of all, how long have you been a police officer?

A. Twenty-four years.

Q. Have you been in that district that whole time?
A. Pretty much. Twenty-one of those twenty-four years.
Q. Okay. So do you recall -- I'm going to bring you back to an incident that occurred on December 1st of 2012. There was a call for a robbery at the Subway at 545 North Broad Street. Do you recall that?
A. Yes.
Q. Did you respond to that scene?
A. Yes, I did.
Q. Do you recall whether you were the first officer there?
A. I was the first officer there.
Q. Okay. So what did you do when you first came to the scene?
A. Because of the type of call that came out, I arrived first and then, you know, I made sure the defendant -- the offender was not on location or possibly anybody else was on location where I had to worry where I would need backup as a result of it. I went inside the store and I was immediately met by the cashier. And she -- and I asked her was anybody else here or anything like that. She told me no. We went

on to what happened in the store.
Q. So you said the type of call that you received, was that a robbery call?
A. Yes.
Q. Was it a robbery with a weapon?
A. Yes.
Q. Okay. So when you spoke to -- did you later find out her name is Ms. Headen?
A. Yes.
Q. Okay. When you spoke to Ms. Headen, you completed some police paperwork, correct?
A. Yes.
Q. And that's the -- the paperwork you filled out is called a 7548.
A. 7548.
Q. If you look at that binder in front of you, under tab A, the very first document, do you recognize that document?
A. Yes.
Q. And what is that from?
A. That's from the night of the robbery.
Q. Okay. Is this a document that you completed?
A. Yes, I did.
Q. And at the bottom, the second line from the

bottom, there is a signature and a number. Is that your signature and your payroll number?
A. That's my last name, my payroll number and my badge number.
Q. Okay. And do you recognize your handwriting here?
A. Yes. I recognize my handwriting.
Q. So when you're filling this out -- this looks about the size of perhaps like a traffic ticket. Does that sound right? A little bigger?
A. It's a little bit bigger than this. This has been a little shrinked down --
Q. Okay.
A. -- as a result of printing on a copy machine.
Q. So is this a form that you have and then you fill it out? You fill in the blanks --
A. Yes.
Q. -- as you're talking to the witness?
A. I usually fill it out -- it might take the back of -- the back of them and fill out the little information that the complainant or the witness gives me. And then I'll summarize it on and then I'll put it down on this piece of paper.
Q. Okay. But the purpose of the 7548A is to

get kind of the gist of what happened, correct?
A. Yes.
Q. Including a description of the suspect.
A. Yes.
Q. So here, if you look about halfway down, you have that it was a -- and I'm starting about four lines under where it says Joyanah Headen's name.
A. Yes.
Q. It says "black male lifted up his shirt with left hand and he pulled" -- it says -- "a black handgun." Correct?
A. Yes.
Q. If she had given any more of a description of that gun, would you have put it down there?
A. Yes, I would.
Q. Okay. If she had said, for example, it's a revolver or anything like that?
A. Yes.
Q. Okay. You also wrote on the next line down that the suspect was described as a "black male, late 30s, 5 foot 8, medium built, black sweatshirt, blue jeans, black sculley, red and white, medium complexion, black white NB" -- does that stand for New Balance?
A. Yes, New Balance.

Q. Okay. So that description as I read it, is that what you have in your police paperwork?

A. Yes.

Q. Okay. And then lastly, a little bit further down, you wrote that --

MS. LINEHAN: Your Honor, at this time, I have no objection to the admission of this exhibit. I mean, it is what it is. So for the officer to go through it, it's not as if he's being impeached.

THE COURT: Just read it.

MS. MACEOIN: Certainly.

BY MS. MACEOIN:

Q. The bottom of the document, it says "Eastbound on Broad" -- I'm sorry -- "Southbound on Broad, eastbound on 1300 Brandywine", correct?

A. Yes.

Q. What is that describing?

A. That's from the complainant, from the witness. That's the direction that the male fled when he left the store.

Q. Okay. And you got that information from Ms. Headen?

A. Yes.

Q. Okay. And you wouldn't know if -- did you talk to any of the witnesses on the scene?

A. There was nobody else but her.
Q. Okay.
MS. MACEOIN: At this time, I don't have any other witnesses -- or any other questions for this witness.
THE COURT: All right.

CROSS-EXAMINATION

BY MS. LINEHAN:
Q. Officer, you were talking about your report where you responded to a robbery victim.
A. Yes.
Q. And the purpose of you writing that brief report is to get down the essential information.
A. Yes.
Q. What do you do with that information?
A. I put it into a story version and write it down on the 48.
Q. And the 48 is a very small form, correct?
A. Pretty much.
Q. So you almost have to write shorthand, correct?
A. Yes. Yes.
Q. And you're practiced at that because you've been a patrolman for a long time, correct?
A. Yes.

Q. Are these black and white New Balance sneakers?
A. Yes.
Q. And these are Government's Exhibit 3. So is that consistent with what the victim told you?
A. Yes.
Q. And, Officer, when you said that you responded, you wanted to make sure that the store was secure and that the perpetrator wasn't on the scene, is that right?
A. Yes.
Q. And that's because you received information that the victim was robbed with a gun --
A. Yes.
Q. -- isn't that right?
A. Yes.
Q. And you were worried about your safety and the safety of the victim --
A. Yes.
Q. -- isn't that right? And any other people that might have come in and out of Subway.
A. Yes. That's correct.
Q. In the Government's -- in the Defense Exhibit A, which the government has stipulated can be moved into evidence, the victim also talks about a

black sweatshirt to you, isn't that right?
A. Yes.
Q. And the victim also told you that the defendant said when he robbed her, "Can you do me one more favor" and give me the money, isn't that right?
A. That's correct.
Q. And that the victim lifted up his jacket and pulled out a gun from his waist --
A. Yes.
Q. -- isn't that right?
A. That's correct.
Q. How was the victim when you were the first to meet her after she had been robbed at the point of a gun?
A. Well, when I arrived, she was pretty rattled. She was worrying about if he was going to come back or something like that. You know, she was scared to go home. And -- 'cause she was worrying about if he would be able to find her.
Q. And what, if anything, did you do to sort of make her know that at that point she was safe from the person that had just fled her store with a gun?
A. I told her, you know, because of my job, that if she lets him -- you know, if she lets this type of person, she will always have to fear him. If

she doesn't stand up to him, then he will always be able to do this, maybe not so much to her, maybe somebody else.

Q. Did the victim tell you, Officer, that she had been robbed with a toy gun?

A. I don't recall.

Q. Did she make it clear to you that she had been robbed with a gun?

A. Yes.

Q. And that's what you put in your report, right?

A. Yes.

Q. And if she had said, I don't think it was a gun, I think it was a toy, would you have indicated that?

A. Yes, I would have.

Q. And would it have changed the way you responded to that location?

A. No, it would not.

Q. Would you have continued to exercise precaution?

A. Yes, I would.

Q. But in this case, you reported that it was a gun, correct?

A. Yes.

Q. 'Cause that's what the victim told you, correct?

A. Yes.

Q. Explain to the ladies and gentlemen of the jury the difference between the information that you take from the victim as the responding officer and put in this small form, which is an incident report, and the time that the detective who responded after would take with the victim when they sit down with her and take her statement. Explain the difference.

A. Initially, when an officer arrives to a scene or any type of incident, and one of this nature, you have to get all the -- as much information you can from an individual that's possibly -- possibly rattled or even injured prior to them getting to a -- get into a rescue squad. So you can get that information over the air for the other officers that are possibly responding or in the area to search for this individual that's committed this type of crime. So you don't have a chance to sit down and take -- you know, allow this person to go into a half an hour story or 45-minute story. This information has to be put out real fast so this individual can be stopped before he does -- he or she does something else or just apprehended as a result of what he did this time.

The detective has more time where they're able to get a better description possibly, a little bit more detail. Well, the person had -- I remember they had, say, something on their pocket. As opposed to when she -- the witness or the complainant initially talks to the officer that arrives, they can't say that to them. You know, all they remember, the jacket was black. Like she said to me that the sculley was possibly a football -- some type of sports hat that he was wearing. But she didn't know the team. Now the detective getting that information could, say, possibly show her different sports teams and she might be able to pick out the actual hat that the individual was wearing where I don't have the time to go on and ask her and show her all these pictures or anything like that.

So when an initial officer arrives, he has to be quick with the information that he receives to put it out so -- to protect other people and possibly apprehend the individual that's doing this crime.

Q. Now, Officer Winckler, I'd like to show you what is one of the exhibits in the case that's been blown up for the jurors and ask, sir, that you direct your attention to this first picture.

A. Yes.

Q. Okay? And I can come closer if you need me to. Officer Winckler --
A. I need to.
Q. You need me to? Okay.
A. It might be easier.
Q. How about if you step down, Officer? Is that okay?
A. Oh, okay.
Q. If you responded as you did on that night -- this is the picture. If you could take a good look at it.
A. Yes.
Q. You're the first officer to respond to the Subway.
A. Yes.
Q. If you had walked into this happening while you responded, in this picture, would you have drawn your weapon and, if so, why?
A. 'Cause -- yes, I would have. And I would have drawn -- pulled my weapon as (indiscernible) gun he had in his hand.
Q. And how many years have you been a police officer?
A. Twenty-four.
Q. Officer Winckler, you talked about the

difference between the information that you get that ends up being flashed over the radio to all the other officers so that they can possibly apprehend --

A. Yes.

Q. -- the robber.

A. Yes.

Q. And the difference between the detective who sits down with the victim and takes his time with the victim while she's attempting to get calmer to give more specific information. You've explained that to the jurors. I now want you to look at what the government has stipulated to moving into evidence, which is Defense Exhibit Q, which is -- well, first, let me ask you. Do you recognize a report like this? Is that a CAD report?

A. Yes.

Q. And what is a CAD report?

A. It's a teletype of what 911 gets -- a 911 call gets and the type of description that they tend to put out to the individuals -- the other officers -- responding officers or officers in the area as a result of what they get from -- I believe from the first officer that responds to the scene.

Q. Okay. Now after the 911 dispatcher gets the call -- and am I correct, Officer Winckler, that often a 911 dispatcher will get more than one call for a particular robbery or a particular crime?

A. Yes.

Q. So it's common that they could get a first call and then a second call, correct?

A. Yes.

Q. And then am I right that the 911 dispatcher then sends the information out over the police radio?

A. Yes.

Q. And an officer like you as well as all the other officers in that district would receive the information, correct?

A. Yes.

Q. Now am I correct that when that information is dispatched, it's often that there are multiple descriptions?

A. Yes.

Q. And as you look at that CAD report, you can see that there is one description and then a second description, maybe even a third, is that correct?

A. Yes.

Q. And this is something that the government has stipulated will be moved into evidence or is by the defense.

Now, Officer Winckler, can you tell the

jurors how common it is for when, as a patrolman, you receive the information over the police radio and you can hear several different versions of a description?

A. Yes. It's just as simple as some people might see it as gray, some people might see it as a bright silver, off-black, dark brown, which, actually, depending on the lighting could just be black, or just 'cause of the lighting it could actually be brown. But when people are nervous and their anxiety is up and they're -- you know, most people -- the average person doesn't go through this type of stuff every day. And they don't know what they should be concentrating on. All some people just see it's a gun or just a knife or the weapon that is standing in front of them. They can't even make out, you know, what the actual person looks like.

Q. And, Officer Winckler, let me ask you this. After the victim would relay information to 911 or to you and it's then relayed over flash information --

A. Yes.

Q. -- aren't I correct, Officer Winckler, that often, the individuals, the 911 dispatcher, details get lost in translation so it wouldn't be that what appears in a CADs report is actually what a victim said?

A. Yeah. That's correct as well.

Q. Isn't it often described, Officer Winckler, when you all are trained that it can be like a whisper down the lane situation where it starts as one thing by the victim and it ends up being something slightly different by the time the patrolman get it?

A. Yes.

MS. LINEHAN: Nothing further.

MS. MACEOIN: If I may, Your Honor.

REDIRECT EXAMINATION

BY MS. MACEOIN:

Q. Officer Winckler --

A. Yes.

Q. -- in this case, there was one witness, correct?

A. Yes.

Q. Ms. Headen?

A. Yes.

Q. And she's the only person that provided you or any other officer that you're aware of a description of the suspect.

A. That's correct.

Q. So on that CAD, what is under your tab as Q, what's actually going to be marked as Defense Exhibit 6 -- if you turn it sidewise, about three-quarters of the way down, it says on the left, "12/1/12" -- that's the date, correct?

A. Yes.

Q. -- "17:49:22" -- so that's approximately 5 p.m. -- 5:49 p.m. and 22 seconds, there's a description there, correct?

A. Yes.

Q. "Black male, older, thin build, black leather jacket, white button-up shirt, gray jeans." Is that correct?

A. Yes.

Q. Okay. And then moments later, it looks like at second 34, so we're talking 5:49 p.m., approximately 12 seconds later, you have a description of brown leather jacket and gray jeans, correct?

A. Yes.

Q. A moment later, at 5:50 p.m. and 39 seconds, you have the addition of "black sculley with square-shape on front, red and white writing on square", correct?

A. Yes.

Q. And then there's two more lines just moments later that say, "5'5", early 30s, black leather jacket, gray jeans", correct?

A. Yes.

Q. "Black hand on gun" -- or "Point of gun" -- I'm sorry -- "Point of black handgun", correct?
A. Yes.
Q. And then, lastly, a "black male, black and white New Balance sneakers", correct?
A. Yes.
Q. Okay. So as far as you're aware, this all came from one person.
A. Yes.
Q. This wasn't one of those situations where multiple people from multiple different angles are giving descriptions.
A. That is correct.
Q. And as the prosecutor just asked you, you're trained that sometimes descriptions in a whisper-down-the-lane kind of way become different by the time they're actually recorded or put out by 911, correct?
A. That is correct.
Q. You have no information that that's what happened in this case.
A. No.
Q. Okay. And this is the CAD report, also called the computer-assisted dispatch, correct?
A. Yes.
Q. The purpose of this report is to document in

writing the substance of the 911 call, correct?
A. That is correct.
MS. MACEOIN: I don't have any further questions.
MS. LINEHAN: One line of questions, Your Honor.

RECROSS-EXAMINATION

BY MS. LINEHAN:
Q. How many people are talking on the police radio at one time when a robbery occurs in Center City, Philadelphia?
A. I don't understand.
Q. You're in your patrol car --
A. Yes.
Q. -- and you get a call about a robbery in Center City, Philadelphia.
A. Yes.
Q. While you are on your way, how many voices can you hear describing the perpetrator?
A. It can be countless numbers depending on who gets there first and who's on the -- you know, who's actually there at the incident. You know, different witnesses see different things. Different people see different things.
MS. LINEHAN: Nothing further, Your

Honor.

THE COURT: All right. Thank you, Officer.

THE WITNESS: Thank you.

THE COURT: You're excused.

MS. MACEOIN: Your Honor, Defense would just like to move into evidence Defense Exhibit 6, which is that CAD for the Subway.

THE COURT: Okay. All right. Admitted.

All right. Whose your next witness?

MS. MACEOIN: Your Honor, at this point, we have a stipulation.

THE COURT: Go ahead.

MS. MACEOIN: Just as Officer Winckler described, there is a CAD for the Anna's Linens robbery which is also a computer-assisted dispatch that if a person -- an officer from the radio room of the Philadelphia police department were called, she would testify that there is a CAD printed out that's marked as Defense Exhibit 7. It is also the printout from the 911 call similar to what you just heard from Officer Winckler.

In that case, on 2/1 (sic) at 2012, at 19:22, which is 7:22 p.m. and 17 seconds, there's a call for a black male at Anna's Linens, "P/gun, black male, Eagles hat, green Eagles jacket". At 7:31 and 9 seconds, it says, "Founded point of gun, black male, Eagles hat, Eagles jacket, 5'8", 5'9", 40 years old, gray goatee, gray sweatpants". And then at 7:39 and 13 seconds, the description is "Green/black/white Eagles jacket, possible" -- it says "Poss leather or windbreaker, Eagles knit cap".

So stipulated?

MS. LINEHAN: Yes.

MS. MACEOIN: Thank you.

THE COURT: Okay. Thank you. It's admitted.

MS. MACEOIN: And, Your Honor, at this time, the defense would like to move into evidence Exhibit -- Defense Exhibits 1 through 7.

THE COURT: All right. Any objection?

MS. LINEHAN: No, Your Honor.

THE COURT: All right. They're admitted. Next?

MS. MACEOIN: Court's indulgence, Your Honor. Your Honor, Defense rests.

THE COURT: Okay. Both sides have now rested. So from our perspective, the next thing we have to do is listen to closing arguments. But we'll take a ten minute break.

(Jury out)

(Recess from 10:33 a.m. until 10:47 a.m.)

THE COURT: Please be seated. Do you want to move that podium? Whatever you're comfortable with. I mean, you don't have to.

MS. LINEHAN: That's fine right there.

MS. MACEOIN: Your Honor, just because I haven't been before Your Honor in a trial, do you have any objection of walking away from the podium or --

THE COURT: No.

MS. MACEOIN: Okay.

THE COURT: Walk anywhere you want. Just don't walk into the jury box.

MS. MACEOIN: Of course not. Thank you.

THE COURT: Or up here.

(Pause)

(Jury in)

THE COURT: Welcome back. We're going to have closing arguments now. Each side has 15 minutes. The government is going to use 10 and then save 5 for rebuttal, is that correct? Hello?

MS. LINEHAN: Yes.

THE COURT: Okay. All right.

MS. LINEHAN: Thank you, Your Honor.

Ladies and gentlemen, I told you when I spoke to you at the beginning of this trial yesterday that there was nothing complicated about this case, that it was short and to the point. And you saw that for yourself. And I indicated to you that there wasn't going to be a lot of evidence. And by that, I meant quantity. And I can tell you that I misspoke if I led you to believe that we didn't have a lot of evidence to prove the guilt in this case because I saw Agent Carpenter wince when I said that. But let me make it clear to you that quantity does not equal quality. The quality of the evidence in this case is outstanding. And the evidence in this case is insurmountable because the evidence in this case is clearly putting this defendant at those two robberies with a gun. So although it wasn't binders and binders of documents and boxes and boxes of exhibits that took you weeks to digest, you saw and heard from the two victims that were there and you saw for yourself what they experienced on those videos.

We had exactly what we needed to show you so that you would have enough to convict the defendant of both of these robberies and of both of the firearms charges in this case. You watched for yourself how this defendant victimized two store employees on December 1st, 2012.

Now in the defendant's opening statement, they began, if you'll recall, by telling you that the defendant was a father and a grandfather and that he was a member of the community. What you have now, ladies and gentlemen, is a very clear picture of what this defendant is. And you have this picture, two of them, blown up here and you've seen a number of exhibits which were still photos from the videos and you've seen the videos, both of them.

This is an individual, the pictures that you have, who acted in complete disregard for Joyanah Headen and Ezekiel Logan. Joyanah Headen and Ezekiel Logan are the daughter and the son and the grandchildren of individuals. So when the defendant opens this case by saying that, through his counsel, he's the father and a grandfather and a member of a community, he's forgetting that you're about to see on videotape him ordering at gunpoint a young woman to tell him the combination to a safe and if she doesn't, he's going to hurt her. Or counting down from 5 while he has a gun pointed as Ezekiel Logan and that man is trying to get the cash out of the register, the cash that doesn't contain any single dollar bills. That's the father and the grandfather.

What member of a community is he? Ladies and gentlemen, one definition of community is a group of people with a common characteristic or interest living together within a larger society. His actions on December 1st, 2012 show you that he is no member of any community. A more accurate definition: antisocial. Antisocial is an individual that is violent or harmful to people, an individual who is adverse to society.

So, please, ladies and gentlemen, use this evidence to call it like it is. He is not a member of this community and these are no actions of a family man. He terrorized two decent hardworking people doing what members of a community do. They earn money to pay their bills and they contribute to society. They don't go in to a sandwich shop or a linens store and point a handgun at two hardworking people and demand what they're not entitled to which is the cash from the register. He's just going to take what he wants and when he didn't get enough in the first robbery, he went on, 5.8 miles away, with an hour and a half time, put an Eagles jacket over that hoodie, and then demanded more. And he got 750 dollars.

Do you remember what he said, this father and this grandfather, to Ezekiel Logan? He said, "Ezekiel, I'll remember your name." Was that necessary, ladies and gentlemen? He had gotten the 750 dollars from the young man. "Ezekiel, I'll remember your name." Do you remember how Ezekiel sounded when he told you that? Did you hear his voice shaking? Did you see him point out the defendant and say with certainty, "That's the man that robbed me" just as Joyanah Headen did the same exact thing.

And, ladies and gentlemen, when the Court gives you instructions on how you're to consider this evidence, one of the things the Court will go over with you will be how you can consider in-court identifications by the victims and how you can also consider identifications and descriptions they gave after the crimes. You have evidence before you from both detectives that these descriptions were spot on. And more than that, the most powerful evidence in this case, if you didn't think those videos were enough and all those photos that we had for you so you could focus in on what was displayed in those videos, the most powerful evidence was the in-court identifications of this defendant by those two victims. The judge will tell you that if those identifications remain strong after cross-examination, you should consider that. And you were here. It was yesterday afternoon and today when both of those victims were cross-examined and not once did you hear them falter in saying "That's him. That's the man that robbed me."

You've had overwhelming evidence of the defendant's guilt. The government presented it to you. And I would submit some of that evidence is even in the defendant's exhibits because the defendant submitted to you and moved into evidence victim Joyanah Headen's statement to Detective Andracchio. And in that statement, she describes the man that robbed her. And when you review that statement, if you do, or if you'll recall it in testimony because the victim went over it in her testimony today and she certainly did on cross-examination, you'll see that it's exactly the person that's sitting in front of you in this trial.

You have two video clips. You have clips of those videos. You have photos of those videos. You see this man over and over again committing the robberies that he's charged with in this four-count indictment. You have the clothing that he wore when he committed those robberies. No, you do not have the Eagles jacket but you have the sweatshirt and the sneakers that he was wearing when he committed both robberies. And the sweatshirt is on the Subway video; the sneakers are in both.

This is the same clothing that the victim saw the defendant in the next day when he was arrested. How fortuitous for the Philadelphia Police Department that Joyanah Headen is driving down the street and sees the man that robbed her the night before and is able to get in touch with Detective Andracchio and he is able to get in touch and dispatch units to arrest the defendant as he's a passenger in a car.

You have evidence that he used a gun in both of these robberies. Both victims had a clear unobstructed view of that gun. They described the gun virtually the same way. Black handgun. One said semiautomatic; one said automatic. Both of you (sic) told you over and over again it was a real gun. Both testified to you that they acted the way they did because of that gun. There was no doubt to them that this wasn't a toy.

Ladies and gentlemen, there's been nothing in this trial that's been presented to you to make you doubt that what appeared in that Subway video was a real gun. It was the same gun he used to do both robberies. So even though you don't see it in the Anna's Linens video because of that counter display, you have evidence from the Subway video and from what Ezekiel Logan told you to put the two together. Ladies and gentlemen, in both, he had it in his waist. You saw that in the Subway video and Mr. Logan described that for you as he was watching the Anna's Linens video.

He also told you, which was consistent with what you saw in the video, that when the defendant pulled the gun out, he did it with his left hand and that's consistent with what you saw in the video as he goes around the counter.

You had -- it began with 29 years of total police experience because I wasn't expecting Officer Winckler to testify today. So if you add the nine years experience of Detective Andracchio -- and I apologize to the detective 'cause I know I'll get this wrong -- the 20 years experience of Detective Flacco and you add the 20 years experience of Officer Winckler, all three, 49 years of police experience, testified for you that that gun was real based on what they saw in that photo. Detective Andracchio and

Officer Winckler both told you if they came upon that scene at Subway, they would have drawn their weapon. And why? Because it was a real gun. And Detective Andracchio went on to describe for you how, in watching that video, he could see that the defendant had familiarity with that weapon, that this was no toy. The way he was handling it, where he put it, how he displayed it. And Officer Winckler told you today, looking at the picture for the first time, if I came upon that, I'd draw my weapon because that's a gun.

Ladies and gentlemen, it was the same gun that was used in Anna's Linens. You have enough evidence to find him guilty of using a firearm in furtherance of a crime of violence

When I opened yesterday, I told you the elements of the crimes that I have to prove. I have to prove that both stores were robbed. I have to prove that both of the victims were intimidated into giving over the property of those stores. You have ample evidence in both. They were held up by gunpoint. I also have to prove for both of the counts of the robbery, which is Count I and Count III of the indictment, that interstate commerce was affected. And as I told you in the beginning of this, that might sound complicated, the words "interstate commerce" and the affect on them, but we made it easy for you because we stipulated in this case Government's Exhibit 30 that interstate commerce was affected by virtue of the two stores selling products from places outside Pennsylvania. So you have enough evidence in each of the robberies to find him guilty.

For using and carrying a firearm in relation to a crime of violence, the government has to prove that the defendant committed the crime of robbery as charged. And I would submit to you that we have given you more than enough evidence to satisfy each of the elements of the robbery as I just went through and also that the defendant knowingly possessed a firearm in furtherance of those crimes.

The defendant, based on the trial, seems to want you to find him not guilty because he didn't commit the robberies. That's exactly what was said in opening statement. The statement was the defendant, Anthony Robinson, didn't commit these robberies. So, ladies and gentlemen, the victims were completely off when they identified him in court, when they described him immediately after the robberies, when Joyanah Headen saw him walking down the street the next day wearing the same clothes, and when Ezekiel Logan picked him out from a photo array without hesitation ten days after the robbery.

The defendant maybe committed the robberies, maybe didn't, but, ladies and gentlemen, there was no gun. The government doesn't have a gun. We've never hidden behind the fact that we didn't recover a gun in this case. The car that was searched was owned by someone else. The defendant was a passenger in the car. It was the next day. Detective Andracchio and one of the other officers told you that the individual that was driving the car was the owner of the car. There was no gun in it, no (indiscernible) in it, no other evidence of the robberies. But you know what was in that car? The defendant who committed the robberies, who had been identified by the victim as the person that robbed her the night before. And you know what else was in that black Escalade? The clothing that he was wearing on his person, the black sweatshirt that you have and the New Balance sneakers which appears in the description that the victim gave immediately after she was robbed.

You have a photo of the gun that was used. I've already explained to you that you can take that evidence of what was described to you from Sunday -- from Subway and apply it to the robbery at Anna's Linens. He used the same exact method to rob both of these stores. And, ladies and gentlemen, he used the same weapon. In both of those robberies, he said "Can you do me a favor and give me the money?" In both of those robberies, he made a purchase before he robbed the stores. In both of those robberies, he used a handgun that he pulled from his waist and pointed at the victims.

Sometimes things are as clear as they seem.

THE COURT: You're almost at 15 minutes.

MS. LINEHAN: I'm finishing, Your Honor.

THE COURT: Well, you're not going to get much rebuttal.

MS. LINEHAN: Sometimes things are as clear as they seem. And in this case, the defendant's guilt is clear

THE COURT: You have a one minute rebuttal.

MS. LINEHAN: Understood, Your Honor.

MS. MACEOIN: Good morning, everyone. In the beginning of this case, the prosecutor told you that this was simple, that this was clear, that this was "plain as day". I submit to you all that this is not the case. After hearing all the evidence, while it was a brief trial, it certainly was not simple, things are not clear and things are certainly not plain as day.

I'm going to talk to you very briefly about two quick legal principles that you're going to hear more about from His Honor when he gives you the instructions. But they're very important to keep in mind during listening to our arguments and, of course, when you're deliberating. First, and you've heard this term before, the defendant is presumed innocent unless the government can prove beyond a reasonable doubt that he is guilty of these crimes. So what does that mean? It means that when a person is indicted or arrested, they have no strikes against them. You can't use that against them in determining guilt. Okay? So the fact that Mr. Robinson sits over here at defense table cannot be used against him. The fact that he was indicted cannot be used against him. Okay? That protects each of us, all of us as citizens.

Now one of the reasons why that presumption exists and one of the reasons why the government had that high burden is because you have to look at the resources that it has to prosecute somebody. In this case alone, they have two different police districts, two different detective divisions and the FBI that are prosecuting Mr. Robinson. Processing crime scenes, gathering evidence, talking to witnesses. Okay? The average citizen doesn't have that behind him. So the presumption of innocence always remains with the defense and it never changes. It's never his burden.

So what is that burden? The government's burden is to prove its case beyond a reasonable doubt. Now that definition, which, again, you'll hear from His Honor, is the kind of doubt that would cause a reasonable ordinary person to pause or hesitate or refrain from acting in making a decision of the utmost importance in their life. Now these aren't every day decisions like whether to take the train or whether to drive in to work; these are major decisions. And for many of you who have served on criminal juries, you may have certain analogies used. For example, a major life decision like getting married or buying a house. I submit that that's not enough. Both of those decisions can be reversed. You can get divorced; you can sell your house. I think the proper analogy is deciding whether to undergo certain medical treatment or to have surgery because that is not a reversible decision. Would you make a major life decision, like having surgery or undergoing an invasive medical procedure, with reasonable doubt, with the kind of evidence that would cause you to have reasonable doubt, pause, refrain from acting? Because the decision you make in this case is not reversible. You can't come back after thinking about it for a week and say, you know what, maybe I made the wrong decision. You have to be sure beyond a reasonable doubt on all charges in this case.

So let's go over the evidence in this case. I want to start by talking about Ms. Headen. You heard from her today. And she is a very tough woman. She was very scared that day, obviously. What started as a normal interaction and normal shift, 40 minutes into it, someone comes in and in the middle of making them a sandwich pulls a gun. Anybody would be scared. Obviously. And she did what she should have done. She immediately opened the cash register and turned it over. But she was shaken. Detective Andracchio said that when he arrived, she was shaken. Officer Winckler said that when he arrived, she was shaken. You heard her talking to her wife on the phone. Obviously, she was upset. This is very traumatic.

Same with Mr. Logan. In Mr. Logan's case, the robber told him, "I'm counting backwards from 5." And he had what he thinks is a gun in front of him. What's he going to do? He's going to immediately turn things over. But that is his focus. He thought that by the time the robber got down to 1, he would be shot. That's traumatic. That's what he's focusing on in that case. Get the cash to this individual. My 10 dollar an hour job is not worth my life. Okay?

And we know that they were mistaken in their identifications of the defendant because of the discrepancies in the -- the little changes in the difference between the descriptions. So starting with Ms. Headen, at one point, she describes a brown leather jacket. That's a very specific description. Then it becomes a black leather jacket. At one point, it's a sweatshirt. One point, someone's wearing a hat; another one, there's no description of a hat. And that's all the different descriptions that you heard that she gave to 911, to her wife, to Officer Winckler, to Detective Andracchio. And like Officer Winckler said, people are scared. There might be discrepancies. What might be gray to someone or black to another, that's true. And that's what happened here. But it also goes to show you as evidence that she was focusing on the gun. She was very traumatized and that her description cannot necessarily be relied upon in this case.

Same with Mr. Logan. When Ms. Headen saw Mr. Robinson on the 2nd of December, the day later, she said it really hit her when she got home that night. So this is less than 24 hours later, she's going about her business, she's going to her mother's house, and she sees this person wearing the same sweatshirt as the person who robbed her the day before. I submit to you, ladies and gentlemen, that she saw the sweatshirt in that moment, that's the person that robbed her, and the identification that she makes of Mr. Robinson is based on that sweatshirt. And so the identification she makes to Officer Auty when he stops the car is the same person she just saw on the street that she's associating with the robber. And the same identification she made in court is another misidentification of seeing that person on the street that she's immediately associating that traumatizing event with as the person wearing that sweatshirt. Okay?

Mr. Logan. Ten days after this traumatic event, the officer comes -- or, excuse me --

Detective Flacco comes to his house and shows him a photo array. Well, he told you that based on what he knows about photo arrays from TV and movies, he thought the suspect has to be one of those eight people. So he took a look. Well, that's him. But that's not necessarily reliable. If you look at that photo array, there are some people who are heavier, not necessarily skinny or medium build. There's people who are darker complected (sic). Okay? These people don't look identical. And if this person looks most like the robber, well, I think the person has to be in the photo array, so I'm going to identify him. And when he comes to court, he's re-identifying making the same mistake he made to Detective Flacco.

Let's talk about some of the other evidence briefly that you heard in this case. You know, when Mr. Robinson was stopped on the 2nd of December, he didn't resist. He didn't run. An officer comes up to him. He gets out of the car. The officer didn't have to use tactical maneuvers to get him to the ground or anything; he complied. And then what about that paperwork that Officer Auty did? You remember, he has a description of Mr. Robinson on the scene at the card that he filled out, that 75229. And in there, he describes the clothing as a gray hat that he's wearing, a black jacket and blue jeans. But the officer, whoever that other officer is, that mysterious officer that we don't know who it was that transported him, he described in his paperwork, which he completed for Officer Auty, as it being a black skullcap not gray, a black hoodie, not a jacket, and a gray jeans not blue. Now why -- we understand why people get descriptions mixed up when they're in trauma, when they have a gun pointed at them. But why are these officers, why is this paperwork not consistent? This doesn't make sense.

And to believe the government's case, you also have to believe that this individual robs Subway in this black and gray sweatshirt. Two hours later, changed clothes, robbed the different store in Germantown several miles away. And then the next day is seen on the street in North Central Philadelphia, in Logan, wearing the same sweatshirt supposedly that was worn at the first robbery. But no gun. Right? So he puts the clothes back on but no gun. That doesn't make sense.

Now these may seem like small details and I'm sure Ms. Linehan will get back up and argue that these are small details, but the meat of the case is in the details. And the details, when they don't add up, create reasonable doubt.

So finally, ladies and gentlemen, I want to talk about the supposed gun. All right? In order for the government to prove those two counts on the gun, they have to prove beyond a reasonable doubt that the person who did this act had a real firearm. And you will hear a description of what a firearm is from His Honor when he reads the instructions. But remember, a toy gun is not a firearm. A fake gun is not a firearm. A prop is not a firearm.

Now the government would like you to believe that this is a real firearm based on their description. Well, Ms. Headen said, you know, I've only seen one gun in my life and that was my brother's. And so, based on that, I assumed that this gun was a real gun. Okay? Well, that's not enough, ladies and gentlemen. There are plenty of fake guns, plenty of toy guns that can look very realistic. Look at the movies and television. Those don't look like BB guns. Those certainly don't look like water pistols. But are they real guns? Do they meet the legal definition of a firearm? No. And how they're being held as Detective Andracchio testified, well, I could tell it was a real gun because his finger was here and it was held like this and it was out of the way. Well, again, look to movies and television. When they're holding it, it looks very realistic. Okay? Someone can hold a fake gun just like they would hold a real gun. That's not proof that it was real.

And finally, the victims' reactions in this case are no proof that this was a gun. Ms. Headen is working at a Subway; Mr. Logan working at Anna's Linens. Ten dollars an hour. If someone pulls a gun on them in that situation, they're not going to stop and be like, you know what, is that a real gun? We would hope they wouldn't. None of us would do that. They're going to act as if it's a real gun. Their lives are not worth their ten dollar an hour job. They immediately turn their focus, get all the cash out of the drawer. So that -- the way that they reacted to it is not evidence that it was a real gun. Okay? Remember that.

And same as how the police officer testified. I think it was Officer Winckler said, well, if I came in -- I think the other officer said as well. If I came in and I saw that on the counter, I would have pulled my gun. Well, of course they would have. They're not going to take the time to assess whether that's a real gun. They're going to accordance as if it is. But again, how they would act and how the victims acted is not evidence that it's a gun.

So again, you don't have a gun in this case. You can't examine it. You can't look at it. There's no expert testimony that this is a firearm under the legal definition. What you do have is something that I thought was interesting that Detective Andracchio testified to. And I quoted it. He said, "I guess it's a real gun. It appears to be a real gun." ladies and gentlemen, that right there is reasonable doubt. If you go back to that room and you're deliberating, you're saying, well, I think it's a gun, I guess it's a gun, I mean, Mr. Logan saw one inch of the barrel and, again, he thought it was a real gun at the time. That's fine. He acted in accordance with that. But you are now the finders of fact. And if the government -- and if you find that the evidence does not show beyond a reasonable doubt that this is a firearm, you have to return a verdict of not guilty. So remember that. If you're saying I guess, it seems, it appears, that's not enough.

So I ask you when you go back and deliberate, keep that in mind. And when you review all this evidence you will come to the one conclusion and that is that Mr. Robinson's not guilty. Thank you.

THE COURT: You have one minute rebuttal.

MS. LINEHAN: Ladies and gentlemen, when they don't have the law on their side and they don't have the facts, they talk to you about reasonable doubt. Reasonable doubt is not beyond all doubt. Reasonable doubt is based on common sense. The judge will instruct you on common sense. The judge will tell you that you use all of your life to create standards for evaluating credibility of witnesses. You had two victims who weren't in TV, they weren't watching in the movies. They saw a gun, they said it was a gun. Neither Joyanah Headen or Ezekiel Logan said I guess it was a gun. I'm not sure. They both said real gun and they said it not once but again and again when they were cross-examined.

This was the shining example of excellent police work. Detective Andracchio had the good fortune to have a victim who was strong and certain when she said the man that robbed me is driving down the street. He relayed the information to Detective Flacco. Detective Flacco acted immediately and went out and Ezekiel Logan picked him out and said "That's the man that robbed me."

You had the benefit of two videos that showed this defendant as plain as day robbing those individuals. And in one of those videos, you see the gun, the gun that he used in the second robbery.

Ladies and gentlemen, there is nothing in the testimony or the evidence that will cause you to have a reasonable doubt in this case. The issue of the clothing, not hard in an hour and a half on a cold winter day to put an Eagles jacket over the black hoodie that you saw in this case. He didn't change his clothing. He put a jacket on.

Ladies and gentlemen, the evidence in this case is as plain as his face is the face on those videos. Convict him based on the evidence.

THE COURT: All right. My turn. Why don't you all stand in place and stretch a little bit 'cause I'm going to be talking to you for about 40 minutes. All right. Okay. Be seated.

Now, members of the jury, you've been patient and attentive throughout this case and I ask that you stay attentive while I instruct you on the law that you must apply.

As you're aware, this case involves a

criminal indictment. I will first discuss some general matters before explaining the law as it applies to the indictment.

The judge and the jury have separate distinct functions. The jury must determine what the facts are. You have listened to all the evidence and from that evidence, you will determine what you consider the facts to be. In deciding what really happened in this case, you must follow your recollection of the evidence, not the recollection of the attorneys or even the Court. If any attorney has stated something to be a fact, or if the Court states something to be a fact at any time, and it's not the same as your recollection of the evidence then your recollection of the evidence controls. You must follow your own independent recollection of the evidence in arriving at your verdict.

You must make your determination of the facts solely from the evidence you have heard and seen and not for any reason outside the record of this trial. You cannot base your verdict on guess, suspicion, speculation, intuition or conjecture. In short, you must determine where the real truth lies as to the facts in this case. Once you have determined what the facts are then you must apply the law as I give it to you now.

The Court's job is to conduct the trial in a fair and efficient manner and to rule on questions of law during the course of the trial. It is also my function to instruct you as to the law which applies to this case. It is your duty to accept the law as the Court states it. You should consider all the instructions I give as a whole. You may not disregard any instruction or give special attention to any one instruction or question the wisdom of any rule of law that I give you. That is, you must not substitute or follow your own opinions as to what the law is or should be. It is your duty to apply the law as I give it to you regardless of the consequences.

The defendant has pled not guilty to the charges contained in the indictment. This plea puts into dispute each of the elements of the offenses charged as I will describe in a moment.

Don't bother taking notes as to what I'm saying 'cause I'm going to give you a copy of this. So you can just open up your mind and listen.

In a criminal case, when a defendant comes into court, he is presumed innocent. This is not a mere matter of words or a figure of speech. A defendant begins the trial with a clean slate with no evidence against him. The indictment is not evidence of any kind. The law permits nothing but the evidence admitted at trial to be considered by the jury as to any charge against the accused. The presumption of innocence alone is sufficient to acquit a defendant unless the jury is satisfied beyond a reasonable doubt of the defendant's guilt. This can be done only after careful and impartial consideration of all the evidence. In a criminal case, the burden is always on the government to prove each element of the crimes charged beyond a reasonable doubt. The burden is never on a defendant to prove that he is not guilty.

In addition, the law never imposes on a defendant the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the government's witnesses.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based on reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs. You must remember that the defendant is never to be convicted on mere suspicion or conjecture. A reasonable doubt is not a caprice or a whim. It is not an excuse to avoid the performance of an unpleasant duty or sympathy.

If after careful and impartial consideration of all the evidence in this case you have a reasonable doubt that the defendant is guilty of the charge, you must find the defendant not guilty. If you view the evidence in this case as permitting either a finding of guilty or a finding of not guilty, you should adopt the conclusion of not guilty as the verdict. If, on the other hand, after fair and impartial consideration of all the evidence you are satisfied of the defendant's guilt beyond a reasonable doubt, you should adopt the conclusion of guilty as the verdict.

Counsel has made motions and objections during the course of the trial. They have done that according to the law and their duty to their clients. You must not take the fact that the Court has denied or granted such motions in the course of the trial as any indication that the Court believes the defendant to be guilty or not guilty. The jury has no concern with the matters of law raised by these motions. The fact that the Court has, on occasion, discussed the Rules of Evidence with counsel should have no bearing directly or indirectly, on the outcome of this case. It is counsel's duty to vigorously pursue their arguments on behalf of their respective clients. You may not allow the carrying out of counsel's duty to have an effect on your verdict. The Court, on the other hand, was attempting to apply the Rules of Evidence and to confine the testimony to only what the rules permit. You, the jury, should confine your consideration to the evidence presented from the witnesses and from any exhibits admitted into evidence.

There are two types of evidence you may use to properly find the defendant guilty or not guilty of a crime. One is direct evidence such as the testimony of an eyewitness and any exhibits introduced into evidence. The other is circumstantial evidence. Circumstantial evidence is proper and admissible evidence. It consists of facts and circumstances surrounding an event from which a jury may infer other connected facts which reasonably follow according to the common experiences of people. This example illustrates the difference between direct and circumstantial evidence. Assume that you wanted evidence that it had rained. Direct evidence of this fact would be the testimony of someone who saw the rainfall. Circumstantial evidence, on the other hand, would be the testimony of someone who saw wet streets, water drops on cars and people with wet umbrellas. The law makes no distinction between the weight to be given to direct as compared with circumstantial evidence.

Often, the elements of a crime can only be proved through circumstantial evidence. When a crime charge is sought to be proved by circumstantial evidence, the circumstance proved should be such as reasonably and naturally justifies an inference of the guilt of the accused and should be of such volume and quality as to overcome the presumption of innocence.

You are to consider only the evidence admitted in this case. However, in your considerations, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from the facts which you find to have been proved such reasonable inferences as you feel justified in the light of your experience. Inferences are conclusions that reason and common sense lead the jury to reach from facts established by the evidence in the case.

The government is required to prove the defendant guilty beyond a reasonable doubt. But no party is required to produce all possible witnesses who may have some knowledge about the facts of the case. The law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The evidence in this case consists of sworn testimony of witnesses regardless who had called them, all exhibits received into evidence regardless of who produced them and all facts that have been agreed to or stipulated. In determining whether the government has proved the defendant guilty beyond a reasonable doubt, consider only the evidence or lack of evidence introduced. When the attorneys on both sides stipulate, or agree, as to the existence of a fact, you should accept the stipulation as evidence and regard that fact as proved. You are not required to do so, however, since you are the sole judge of the facts.

If the Court sustained an objection by one attorney to a question asked by the other attorney, you must disregard the question and not speculate as to what the answer would have been. If after a question was asked and an answer given by a witness the Court ruled that the answer should be stricken -- I did that one time -- stricken from the record, you are to disregard the question and the answer in your deliberations.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

I want you to understand again clearly that the indictment is not evidence. An indictment merely outlines the charges against the defendant. It is not a fact for you to consider. The only evidence you can consider is the evidence that comes to you from the witness stand or from the exhibits admitted into evidence as well as stipulations of counsel. Again, the fact that the defendant has been charged should have no bearing on your verdict.

As I pointed out previously, in your consideration of this case, you must take into account the credibility of witnesses. You are the sole judges of the witnesses' credibility. The Court has nothing to do with that. You may judge the credibility of the witnesses by the manner in which they gave testimony, their demeanor on the stand, the reasonableness of their testimony, their means of knowledge to any fact about which they testified, their interest in the case, the feeling the witnesses may have for or against any of the parties, or any circumstances tending to shed light upon the truth or falsity of the witnesses' testimony. And it is for you to say what weight you will give to the testimony from any and all witnesses including government employees, law enforcement officers or ordinary citizens. The testimony of a witness who is a government official or a law enforcement officer is to be judged in the same way as that of any other witness.

If you believe that any witness has willfully sworn falsely to any material fact, you may disbelieve their testimony in whole or in part or believe it in part and disbelieve it in part taking into consideration all the facts and circumstances of the case. All your life you create standards by which you determine whether someone is telling the truth or describing facts accurately. You will bear these experiences in mind in determining the credibility of each witness that you have heard during the trial.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or transaction may simply see or hear it differently. In weighing the effect of a discrepancy, however, consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

The testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. The earlier inconsistent or contradictory statements are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these statements made somewhere other than here during this trial. It is the promise of the jury to determine the credibility of a witness who has made prior inconsistent or contradictory statements.

If a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject the testimony or give it such weight as you think it deserves.

In making up your minds in reaching a verdict, do not make any decisions simply because there were more witnesses on one side than the other. Your job is to think about the testimony of each witness you heard and decide how much you believe of what he or she had to say and how much weight to give to that testimony.

The defendant in a criminal case has an absolute right under our Constitution not to testify or to present any other evidence because it is the government's burden to prove him guilty beyond a reasonable doubt. You must not attach any significance to the fact that the defendant did not testify. The fact that he did not testify must not be discussed or considered by the jury in any way when deliberating and arriving at your verdict. No inference of any kind may be drawn from the fact that the defendant exercised his right under the Constitution and did not testify.

One of the main issues in this case is whether the defendant is the same person who committed the crimes charged in the indictment. The government, as I have explained, has the burden of proving every element, including identity, beyond a reasonable doubt. Although it is not essential that a witness testifying about the identification be free from doubt as to the accuracy or correctness of the identification, you must be satisfied beyond a reasonable doubt based on all the evidence that the defendant is the person who committed the crimes charged. If you are not convinced beyond a reasonable doubt that the defendant is the person who committed the crimes charged in the indictment, you must find the defendant not guilty. Identification testimony is, in essence, the expression of an opinion or belief by the witness. The value of the identification depends on the witness' opportunity to observe the person who committed the crime at the time of the offense and the witness' ability to make a reliable identification at a later time based on those observations. You must decide whether you believe the witness' testimony and whether you find beyond a reasonable doubt that the identification is correct. You should evaluate the testimony of a witness who makes an identification in the same manner as you would any other witness.

In addition, as you evaluate a witness' identification testimony, you should consider the following questions as well as any other questions you believe are important:

First, you should ask whether the witness was able to observe and had an adequate opportunity to observe the person who committed the crime charged. Many factors affect whether a witness has an adequate opportunity to observe the person committing the crime. The factors include the length of time during which the witness observed the person; the distance between the witness and the person; the lighting conditions; how closely the witness was paying attention to the person; whether the witness was under stress while observing the person who committed the crime; whether the witness knew the person from some prior experience; whether the witness and the person committing the crime were of different races; and any other factors you regard as important.

Second, you should ask whether the witness is positive in the identification and whether the witness' testimony remain positive and unqualified after cross-examination. If the witness' identification testimony is positive and unqualified, you should ask whether the witness' certainty is well founded.

Third, you should ask whether the witness' identification of the defendant, after the crime was committed, was the product of the witness' own recollection. You may take into account both the strength of the later identification and the circumstances under which that identification was made. You may wish to consider how much time passed between the crime and the witness' later identification of the defendant.

You may also consider whether the witness gave a description of the person who committed the crime and how the witness' description of the person who committed the crime compares to the defendant. If the identification was made under circumstances that may have influenced the witness, you should examine that identification with great care. Some circumstances which may influence a witness' identification are whether the witness was presented with more than one person or just the defendant; whether the witness made the identification while exposed to the suggestive influences of others; and whether the witness identified the defendant in conditions that created the impression that he was involved in the crime. If after examining all of the evidence, you have a reasonable doubt as to whether the defendant is the individual who committed the crimes charged, you must find the defendant not guilty.

During the trial, you saw video recordings of the defendant made without his knowledge. These store surveillance recordings were made with the consent and agreement of Subway Inc. and Anna's Linens as part of their security measures. The use of this procedure to gather evidence is lawful and the recordings may be used by either party.

You will notice that each count of the indictment charges that the offense was committed on or about a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient that the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the time period alleged. Also, where a statute specifies several alternative ways in which an offense may be committed, the indictment may allege the several ways in the conjunctive by using the word "and". It is sufficient for conviction if only one of those alternatives is proved beyond a reasonable doubt to your unanimous satisfaction.

The defendant is charged with more than one offense. Each offense is charged in a separate count of the indictment. The number of offenses charged is not evidence of guilt and this should not influence your decision in any way. You must separately consider the evidence that relates to each offense. And you must return a separate verdict for each offense. For each offense charged, you must decide whether the government has proven beyond a reasonable doubt that the defendant is guilty of that particular offense. Your decision on one offense, whether guilty or not guilty, should not influence your decision on any other offenses charged. Each offense should be considered separately.

Counts I and III of the indictment each charge the defendant with a robbery which interferes with interstate commerce in violation of Title 18, United States Code, Section 1951(a). Count I alleges a robbery of a Subway restaurant at 545 North Broad Street in Philadelphia, Pennsylvania on or about December 1st, 2012 in which the defendant allegedly unlawfully took approximately 100 dollars cash which was the property of Subway from a Subway employee against her will by brandishing a handgun to threaten her.

Count III of the indictment alleges a robbery of an Anna's Linens store at 301 West Chelten Avenue in Philadelphia, Pennsylvania on or about December 1st, 2012 in that Defendant allegedly unlawfully took approximately 750 dollars cash which was the property of Anna's Linens from an Anna's

Linens employee against his will by brandishing a handgun to threaten him.

Counts II and IV of the indictment charge that Defendant knowingly used, carried and brandished a firearm in relation to a crime of violence, namely, the robberies charged in Counts I and III of the indictment.

Counts I and III of the indictment charge the defendant of interfering with interstate commerce by robbery which is a violation of federal law. To find the defendant guilty of interference with interstate commerce by robbery, you must find that the government has established each of the following elements beyond a reasonable doubt:

First, that the defendant took the property described in Counts I and III of the indictment; second, that the defendant did so knowingly and willfully by robbery; and third, that as a result of Defendant's action, interstate commerce was obstructed, delayed or affected.

Robbery is the unlawful taking or obtaining of personal property from the person or in the presence of another against his or her will by means of actual or threatened force or violence or fear of injury whether immediately or in the future to his or her person or property or property in his or her custody or possession or the person or property of a relative or member of his or her family or of anyone in his or her company at the time of taking or obtaining. The government must prove beyond a reasonable doubt that the defendant unlawfully took the alleged victim's property against his or her will by actual or threatened force, violence or fear of injury, whether immediately or in the future. You must determine whether the defendant obtained the property by using any of these unlawful means as set forth in the indictment. The government does need to prove that force, violence and fear were all used and threatened. The government satisfies its burden of proving an unlawful taking if you unanimously agree that the defendant employed any of these methods. That is, the government satisfies its burden only after you all agree concerning the particular method used by the defendant.

In considering whether the defendant used or threatened to use force, violence or fear, you should give those words their common and ordinary meaning and understand them as you normally would. A threat may be made verbally or by physical gesture. Whether a statement or physical gesture by the defendant actually was a threat depends on the surrounding facts.

Fear exists if a victim experiences anxiety, concern or worry over expected personal physical harm. The fear must be reasonable under the circumstances existing at the time of the defendant's actions. Your decision whether the defendant used or threatened fear of injury involves a decision about the alleged victim's state of mind at the time of the defendant's actions. It is impossible to prove directly a person's subjective feeling. You cannot look into a person's mind to see what his state of mind was or is, but a careful consideration of the circumstances and evidence should enable you to decide whether the alleged victim was in fear and whether this fear was reasonable.

Looking at the overall situation and the actions of the person in question may help you determine what his or her state of mind was. You can consider this kind of evidence known as circumstantial evidence, as discussed earlier, in deciding whether the defendant obtained property through use or threat of fear.

You have also heard the testimony of the alleged victims describing their states of mind.

That is, how they felt about giving up the property. This testimony was allowed to help you decide whether the property was obtained by fear. You should consider this testimony for that purpose only.

You may also consider the relationship between the defendant and the alleged victims in deciding whether the element of fear exists. However, even a friendly relationship between the parties does not preclude you from finding that fear exists.

The term "property" includes money and other tangible and intangible things of value.

The third element that the government must prove beyond a reasonable doubt is that the defendant's conduct affected or could have affected interstate commerce. The government and the defendant have stipulated that the Subway restaurant at 545 North Broad Street and the Anna's Linens store at 301 West Chelten Avenue were both businesses engaged in an affecting interstate commerce on or about December 1st, 2012.

The offense of interference with interstate commerce by robbery charged in the indictment requires that the government prove that the defendant acted knowingly with respect to an element of the offense. This means that the government must prove beyond a reasonable doubt that the defendant was conscious and aware of the nature of his actions and of the surrounding facts and circumstances as specified in the definition of the offense charged. In deciding whether the defendant acted knowingly, you may consider evidence about what the defendant said or the defendant did and failed to do, how the defendant acted, and all the other facts and circumstances shown by the evidence that may prove what was in the defendant's mind at the time. The government is not required to prove that the defendant knew that his acts were against the law.

The offense of interference with interstate commerce by robbery charged in the indictment requires that the government prove that the defendant acted willfully with respect to an element of the offense. This means that the government must prove beyond a reasonable doubt that the defendant knew his conduct was unlawful and intended to do something that the law forbids. That is, to find that the defendant acted willfully, you must find that the evidence proves beyond a reasonable doubt that the defendant acted with a purpose to disobey or disregard the law. Willfully does not, however, require proof that the defendant had any evil motive or bad purpose other than the purpose to disobey or disregard the law. Willfully does not require proof that the actor knew of the existence and meaning of the statute making his conduct criminal.

Counts II and IV of the indictment charge the defendant with using and carrying a firearm during a crime of violence which is a violation of federal law. Counts I and III are crimes of violence. In order to find the defendant guilty of the offenses charged, you must find that the government proved each of the following three elements beyond a reasonable doubt:

First, that the defendant committed the crime of robbery which interferes with interstate commerce as charged in Counts I and III of the indictment;

And, second, that during -- in relation to the commission of that crime, the defendant knowingly used or carried a firearm. The phrase "uses or carries a firearm" means having a firearm or firearms available to assist or aid in the commission of the crime of interfering with interstate commerce by robbery. The term "firearm" means any weapon which will expel or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term includes the frame or receiver of any such weapon. "Use" means more than mere possession of a firearm by a person who commits a crime. To establish "use", the government must show active employment of the firearm. If the defendant did not even disclose or mention the firearm, or actively employ it, the defendant did not use the firearm. "Carrying" means that the defendant had the firearm on his person.

Third, that the defendant used or carried a firearm during and relation to the crime of interfering with interstate commerce by robbery. "During and in relation to" means that the firearm must have had some purpose or effect with respect to interfering with interstate commerce by robbery. The firearm must have at least facilitated or had the potential to facilitate the robbery.

In determining whether Defendant used or carried a firearm in relation to a robbery, you may consider all of the factors received in evidence including the nature of the crime of interfering with interstate commerce by robbery, Defendant's proximity to the firearm, the usefulness of the firearm to the underlying offense, and the circumstances surrounding the firearm's presence. The government is not required to show that the defendant actually displayed or fired a firearm or weapon. However, the government must prove beyond a reasonable doubt that the firearm was in the defendant's possession or under his control at the time that the crime of interfering with interstate commerce by robbery was committed and that the firearm facilitated or had the potential to facilitate that crime.

I just told you what the essential elements are of each of the offenses charged. Let me emphasize to you now, however, that is these essential elements which the government must prove beyond a reasonable doubt. The government need not prove every fact alleged in the indictment. In making your determination, the entire evidence should be considered and the weight of the evidence should be determined from the entire body of evidence. Should you wish to see any piece of evidence admitted during the trial, please write a note to my criminal deputy, Mr. Campoli, and he will pass the request to me.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Some of you have been taking notes during the trial. It is important for you to remember several things about note taking. Who took notes? Anybody? Nobody. Well, okay. Don't worry about it then.

Upon returning to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court. However, the views of the foreperson are entitled to no greater weight than those of any other juror. And you don't get paid any more either.

You will receive a copy of the Court's charge. That's what I'm giving you now as I said to you. You will get a copy of this for your deliberations. Also, should you have any questions, I instruct you that the foreperson shall write the question down and pass along the note to Mr. Campoli. I will then review the note and inform the lawyers of your question. I may simply write an answer back to you or I may bring you back into the courtroom for further instructions.

Verdict forms have been prepared for your convenience. This form lists all the counts in which the defendant is charged and a space for you to check your verdict, either guilty or not guilty, below each count. You will take these verdict forms to the jury room. And when you have reached unanimous agreement as to your verdict, you will have your foreperson sign the completed form and then return with your verdict to the courtroom.

If you find the defendant guilty of the offenses charged in Counts II and IV, you must answer a question, called a jury interrogatory, to decide whether the offense involved certain conduct. Do not answer this jury interrogatory until after you have reached your verdict. If you find that the government has not proved the defendant guilty of the offenses charged in Counts II or IV, then you do not need to answer this interrogatory.

In answering this interrogatory as in deciding your verdict, you must be unanimous. And in order to find that the offense involved certain conduct, you must all be satisfied that the government proved that conduct beyond a reasonable doubt. The interrogatory asks whether if the defendant is guilty of using and carrying a firearm in relation to a crime of violence he brandished the firearm in the course of committing his offense. To "brandish" means to display all or part of the firearm or otherwise make the presence of the firearm known to another person in order to intimidate that person regardless of whether the firearm is directly visible to that person. You should answer yes or no to this question.

Members of the jury, I will caution you once again that this is a criminal case and that the burden of proof as to each and every necessary element of the crime charged in the indictment must be borne by the government. The burden is on the government from the beginning and remains with the government throughout the trial. It never shifts to the defendant. You must bring in a verdict as to the crimes charged and not to some other crime. And you must be convinced of the necessary elements of a crime as they relate to the facts of that crime or else your verdict must be not guilty. The government must prove each element beyond a reasonable doubt.

I will again instruct you as to reasonable doubt which has been defined as an honest doubt that remains with you as to the guilt of the defendant after considering all the evidence. Reasonable doubt must arise from the evidence and must remain after you've had a full consideration of the case. If you have an honest reasonable doubt after considering all the evidence, the defendant is entitled to the benefit of that doubt and must be acquitted.

You must also note, members of the jury, reasonable doubt cannot be a fancy doubt and a juror has no right to raise up false standards or conjure up a doubt to escape performance of an unpleasant duty. Beyond a reasonable doubt is just what the phrase describes. It is not beyond all doubt. It is beyond a reasonable doubt under the definition I have given you.

I have been charging you on the law that you must apply after you have considered what the facts are in this case. Nothing I have said in my charge should be taken by you to in any way indicate that I believe that there should be or that you should return a verdict of guilty or not guilty in this case as to the counts charged against the defendant. I have simply been telling you what the law of the case is. It is for you, the jury, to return your own verdict in accordance with the law as I have given it to you.

Once you start deliberations, no one will be allowed to hear your discussions and no record will be made of what you say. You may not talk or communicate about this case to the court officials, to me or to anyone except each other. Again, you may not use any electronic device or media, such as a phone, a computer or the internet, to communicate to anyone about this case or conduct any research about this case. Under your oath as jurors, you are not to be swayed by sympathy or bias. You should not be biased or prejudiced or improperly influenced by a person's race, color, religion, national ancestry, sexual orientation or gender. You are to be guided solely by the evidence in the case.

The critical question you must ask yourself as you sift through the evidence is where do you find the truth. This is a quest for truth as to the facts. That is what a trial is. The only task for you to decide is whether or not the defendant has violated the law. If you find that the law has not been violated, you should not hesitate for any reason to return a verdict of not guilty. If, on the other hand, you find beyond a reasonable doubt that the law has been violated as charged, you should not hesitate to render a verdict of guilty.

When you retire to the jury room, your function will be to weigh the evidence in the case and determine whether or not the defendant is guilty solely on the basis of the evidence. Each juror is entitled to his or her opinion. Each should, however, exchange views with his or her fellow jurors. That is the very purpose of jury deliberation, to discuss and consider the evidence, to listen to the arguments of fellow jurors, to present your individual views, to consult with one another and to reach an agreement based solely and wholly on the evidence if you can do so without violence to your own individual judgment. Your final vote must reflect your conscientious conviction as to how the issues should be decided.

Your verdict, whether guilty or not guilty, must be unanimous.

MS. SCOTT: Your Honor, may we see you at sidebar very briefly?

THE COURT: All right. Come on.

(Begin sidebar conference)

THE COURT: What?

MS. SCOTT: Just one matter as to number 35.

THE COURT: What?

MS. SCOTT: The argument that (indiscernible) indicated that during the trial he saw (indiscernible) the defendant made without his knowledge. And they should probably have the knowledge of the person who robbed the store and ask that (indiscernible) the jury, the instructions (indiscernible) that it says something to that effect. A person came into the store rather than the defendant so that they don't believe that we've made that determination already. That's their function.

MS. LINEHAN: I have no objection to changing it.

THE COURT: So what do you want me to change? Defendant to what?

MS. SCOTT: The individual who came into the store.

THE COURT: The individual who came into the store.

MS. LINEHAN: Thank you.

MS. SCOTT: Thank you, Your Honor. I'm sorry (indiscernible).

(End sidebar conference)

THE COURT: Okay. Come on up. It's the court security officer.

Do you solemnly swear that you will keep this jury in some quiet convenient place for their deliberation and that you'll allow no one to speak to them nor speak to them yourself touching the issue before them unless it be to ask if they have agreed upon their verdict, so help you God?

THE OFFICER: Yes.

THE COURT: Okay. And the two alternates, you are excused at this point. You can feel free to stay in the courtroom if you wish. It's up to you. I thank you very much for your service and you can now -- do you have anything in the room?

THE OFFICER: Do you have anything in the back?

THE COURT: Okay.

THE OFFICER: I'll take you back there now.

(Jury out)

THE COURT: As soon as they come out then you go back in there. We want to wait till they -- all right. That's not too bad. Who has a copy?

(Conversation off the record)

THE COURT: Okay, jurors.

(Jury out to deliberate)

(Conversation off the record)

THE OFFICER: Your Honor, we're just going to hold him back there for a few minutes and --

THE COURT: Okay.

(Pause)

THE COURT: Tough client. Is this your first one with me?

MS. MACEOIN: It is with you, Your Honor, yes.

THE COURT: Good job.

MS. MACEOIN: Well, thank you, Your Honor.

THE COURT: You too?

MS. LINEHAN: Yes, sir.

THE COURT: You've been in front of me before?

MS. LINEHAN: No, Your Honor.

THE COURT: Okay. Well, it was enjoyable. It was enjoyable. You just got to do better time management.

MS. LINEHAN: You're correct, Your Honor.

THE COURT: You know what you should do is tell the officer to signal you when you get to 10.

MS. LINEHAN: You know, Your Honor, normally I would have had a chance to go through it myself to see how long but this went very quickly, as you saw. So --

THE COURT: That's normally the way it is with me.

MS. LINEHAN: Right. But --

(Off the record)

(Recess from 12:09 p.m. until 1:56 p.m.)

THE REPORTER: Court present and jury. Please rise.

(Jury in)

THE REPORTER: Members of the jury, in the matter of United States v. Anthony Robinson, criminal number 13-232, as to the verdict form, question 1:

As to Count I of the indictment charging Anthony Robinson with obstructing, delaying and affecting commerce and the movement of articles and commodities in commerce and attempting to do so by robbery of the Subway Restaurant at 545 North Broad Street in Philadelphia, Pennsylvania on or about December 1, 2012, we, the jury, unanimously find the defendant, Anthony Robinson, not guilty or guilty?

THE FOREPERSON: Guilty.

THE REPORTER: Question 2: As to Count II of the indictment charging Anthony Robinson with knowingly using or carrying a firearm during and relation to a crime of violence, specifically robbery of a Subway Restaurant at 545 North Broad Street, Philadelphia, Pennsylvania, we, the jury, unanimously find defendant, Anthony Robinson, not guilty/guilty?

THE FOREPERSON: Guilty.

THE REPORTER: Count II interrogatory: Do you unanimously find that the government proved beyond a reasonable doubt that the defendant brandished the firearm when committing this offense: No or yes?

THE FOREPERSON: Yes.

THE REPORTER: Question 3: As to Count III of the indictment charging Anthony Robinson with obstructing, delaying and affecting commerce and the movement of articles and commodities in commerce and attempting to do so by robbery of the Anna's Linens at 301 West Chelten Avenue in Philadelphia, Pennsylvania on or about December 1, 2012, we, the jury, unanimously find the defendant, Anthony Robinson, not guilty/guilty?

THE FOREPERSON: Guilty.

THE REPORTER: Question 4: As to Count IV of the indictment charging Anthony Robinson with knowingly using or carrying a firearm during and relation to a crime of violence, specifically robbery of the Anna's Linens at 301 West Chelten Avenue, Philadelphia, Pennsylvania, we, the jury, unanimously find defendant, Anthony Robinson, not guilty/guilty?

THE FOREPERSON: Not guilty.

THE COURT: You want to poll the jury?

MS. MACEOIN: No, Your Honor.

MS. LINEHAN: No, Your Honor.

THE COURT: Okay. Ladies and gentlemen of the jury, I want to thank you very much. It's not easy to sit where you're sitting and do what you did and the Court thanks you for your time and effort in this regard. And now you can go back to the room where I will come back there and talk to you.

(Jury out)

(Recess from 2:02 p.m. until 2:08 p.m.)

THE COURT: All right. On the record. I'm ordering a pre-sentence report. And as I said, sentencing will probably be in 90 days. You'll get notice of the date. All right?

MS. LINEHAN: Thank you, Your Honor.

MS. MACEOIN: Thank you, Your Honor.

THE COURT: Okay. Take care.

MS. MACEOIN: Always a pleasure. Have a good day.

(Court is adjourned)

* * * * *

C E R T I F I C A T I O N

I, Lisa Beck, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Beck (CET**D-486)

AAERT Certified Electronic Transcriber

Date: April 14, 2015

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